

ILL HIST. SURVEY





STATE OF ILLINOIS

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DEPARTMENT OF PUBLIC WORKS AND BUILDINGS

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DOCUMENTARY HISTORY  
of the  
ILLINOIS  
AND MICHIGAN CANAL

Legislation, Litigation and Titles



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## PREFACE

The Illinois and Michigan Canal, connecting the Illinois River near LaSalle with Lake Michigan at Chicago, was built by the State of Illinois during the years 1836 to 1848. The use of the canal as a navigable waterway has long been discontinued.

In 1954, a provision that the canal should never be sold or leased was removed from the Constitution of Illinois, with a view to the sale or disposal of the canal and canal lands. In 1955, the General Assembly directed the Department of Public Works and Buildings to report on problems which affect the proposed sale of Illinois and Michigan Canal lands.

The basic problems to be resolved in connection with sale of the canal lands are legal problems involving titles. The resolution of such legal problems is not within the scope of the Department. It was therefore considered that the most suitable procedure would be the compilation of a documented historical report on those phases of legislation and litigation which relate to the question of titles. It is believed that such a documented report will serve to give the General Assembly, and the Officers of the State, such factual data as is now available on the question of canal titles.

Chapter 1 defines the basic problems to be resolved, and summarizes the basic facts relating thereto. Chapter 2 presents the views and comments of the Attorney General of Illinois on these basic problems as expressed subsequent to a review of this documentary report. The remainder of the report presents in detail the documentary historical data covering legislation and litigation relating to titles to the canal lands.

Reference is made in the report to various appendices. These have not been printed, but a list is included which indicates where the original documents may be found. Copies of the documents listed are on file at the office of the Division of Waterways.





# CONTENTS

	PAGE
PREFACE .....	3
LIST OF EXHIBITS .....	6
CHAPTER 1. Summary of Basic Problems and Related Data .....	7
CHAPTER 2. Comments of the Attorney General of Illinois	17
CHAPTER 3. Early Events in the Canal History.....	31
CHAPTER 4. Legislative History of the Federal Act of March 30, 1822.....	35
CHAPTER 5. Proceedings by the State Relative to the Federal Act of March 30, 1822.....	43
CHAPTER 6. Legislative History of the Federal Act of March 2, 1827 .....	49
CHAPTER 7. Proceedings by the State Relative to the Federal Act of March 2, 1827.....	57
CHAPTER 8. History of the Land Grant.....	65
CHAPTER 9. Sale of Lands Along the Canal Route.....	73
CHAPTER 10. Status of Reservations Created by the Act of March 30, 1822.....	77
CHAPTER 11. Lands, Damages, and Rights of Way.....	85
CHAPTER 12. Canal Location and Boundaries.....	95
CHAPTER 13. Status of the Feeder Canals.....	107
CHAPTER 14. Miscellaneous Legislation .....	109
CHAPTER 15. Review of Litigation.....	113
CHAPTER 16. Attempts by the State to Perfect Title.....	129
CHAPTER 17. Constitutional Provisions Relating to the Canal .....	139
CHAPTER 18. The Construction Period.....	141
CHAPTER 19. Subsequent and Related Construction, 1848-1933 .....	151
CHAPTER 20. Drainage and Maintenance.....	155
CHAPTER 21. Present Physical Condition.....	161
CHAPTER 22. Present Use of the Canal.....	169
LIST OF APPENDICES.....	171

## LIST OF EXHIBITS

1. Indian Cessions of Illinois Lands.....Page 42
2. Map of that part of the State of Illinois  
through which it is contemplated to con-  
struct a canal.  
By J. Post and R. Paul, 1824.....Following Page 46
3. Map of that part of the State of Illinois  
through which it is contemplated to con-  
struct a canal.  
By James Thompson, 1829.....Following Page 68
4. The Canal Land Grants.....Following Page 70
5. Statement Showing Land Grants Made  
by Congress. General Land Office.....Following Page 72
6. Canal Surveys and Location.....Following Page 84
7. Canal Survey Plat, Section 14, Township  
37 North, Range 11 East, Third Principal  
Meridian .....Page 93
8. Canal Survey Plat, Section 8, Township  
38 North, Range 13 East, Third Principal  
Meridian .....Page 105
9. Drainage Map of the Illinois and  
Michigan Canal .....Following Page 156

## CHAPTER 1

### SUMMARY OF BASIC PROBLEMS AND RELATED DATA

**The Basic Problems:** The Illinois and Michigan Canal lands, as considered in this report, consist of the lands occupied by the bed, banks, towpath, and so-called 90-foot reserve strips throughout the length of the canal. The basic problems to be resolved in connection with the proposed sale of these lands are legal problems relating to titles. The three parties at interest to these titles as they relate to various specific parts or sections of the canal lands are the United States, the State of Illinois, and the abutting property owners. Of primary concern is the interest of the State of Illinois, and to specifically define this interest the following basic problems must be resolved:

- (a) To what specific parts, if any, of the canal lands did the State take consummate legal title as a result of acts of Congress.
- (b) To what specific parts, if any, of the canal lands did the State acquire no right, title or interest whatsoever, as a result of acts of Congress.
- (c) To what specific parts, if any, of the canal lands did the State acquire some right, title or interest, but of lesser degree than the consummate legal title, as a result of acts of Congress.
- (d) For those specific parts, if any, of the canal lands to which the State has acquired some right, title or interest of lesser degree than the consummate legal title, as a result of acts of Congress, what is the specific nature of this right, title or interest.
- (e) For those specific parts, if any, of the canal lands to which the State has acquired some right, title or interest of lesser degree than the consummate legal title as a result of prior acts of Congress, what further legislative action or judicial process, if any, would serve to perfect this right, title or interest into a consummate legal title.
- (f) For those specific parts, if any, of the canal lands to which the State acquired no right, title or interest whatsoever as a result of acts of Congress, is there any legal method whereby the State, in consideration of the long occupancy of the land by the canal, could establish consummate legal title in the State.
- (g) For those specific parts, if any, of the canal lands to which the State acquired some right, title or interest of lesser degree than the consummate legal title as a result of acts of Congress, and where this interest cannot be perfected into the consummate legal title by legislative action or judicial process, is there any legal method whereby the State, in consideration of the long occupancy of the land by the canal, could establish consummate legal title in the State.

The final resolution of these problems falls within the sphere of legal opinion or judicial decision, and not within the

scope of this report. The principal historical events and factual data which appear related to the consideration of these problems are briefly outlined hereafter.

**Origin of Land Titles; Role of the General Land Office:**

All of the lands now considered to be the "canal lands" were originally a part of the public domain of the United States, and all present titles originate through grant or purchase from the United States. The General Land Office, a division of the Treasury Department until 1849, and since that time in the Department of the Interior, was the Federal agency responsible for the interpretation and execution of the various acts of Congress relative to the disposal of the public domain. The principal acts of Congress which relate to the lands now considered as the "canal lands" are subsequently considered.

**Act of April 18, 1818:** By the Enabling Act of April 18, 1818, Ordinance of the Constitutional Convention, adopted August 26, 1818, and Resolution of Congress, approved by the President, December 3, 1818, admitting Illinois into the Union, title to section sixteen in each township to be laid off in the State passed to the State in fee, in trust for the use of schools in such township. This legislation was antecedent to, and unrelated to the subsequent canal legislation. The canal, "as built," passes through five of the sections numbered sixteen.

**Act of March 30, 1822:** By this Act, and in the words of the General Land Office, Congress:

"Granted to the State of Illinois authority to survey and mark through the public lands of the United States the route of a canal connecting the Illinois River with the southern bend of Lake Michigan—and ninety feet of land on each side of said canal shall be forever reserved from any sale to be made by the United States, except in cases hereinafter provided for. After the provisions alluded to the act concludes with Sec. 2, to the effect that every section of land through which the canal route may pass shall be, and the same is hereby reserved from future sale, until hereafter specially directed by law."

One of the provisions of the Act of March 30, 1822 required the State to furnish a complete map of the canal to the Treasury Department within three years after the date of the Act. On January 20, 1825, the State transmitted to the President of the United States a map, known as the Post and Paul map, on which was delineated the proposed canal. This map apparently never reached the Treasury Department.

**Act of March 2, 1827:** By this Act, the United States granted a quantity of public land to the State. The purpose and nature of this grant was stated by the Public Land Commission in 1882 to be as follows:

"Land equal to two and one-half sections in width on each side of the canal was granted, the United States reserving each alternate section, which reservation then inaugurated has become the rule in land grants for improvements. When the lines of the

canals were established selections of lands were to be allowed, and the title in fee at once passed to the States who were to dispose of the same. The act provided that the construction of the canal should be commenced within 5 years and completed within 20 years, and upon failure to comply with these conditions the States were to pay the United States the amount received for any lands previously sold. Purchases from the State were protected by the title in fee having passed to the State upon location of the canals. This was equal to a cash advance by the Nation for construction purposes, as the lands were sold by the States and the money thus obtained built the improvements."

The General Land Office notified the State that the grant of 1827 could not be adjusted until that office was furnished a map of the proposed route of the canal. The State prepared a map, known as the Thompson map, and transmitted it to the General Land Office, stating that this map showed the route selected by the State for the canal. No mention was made of the map filed in 1825. The Thompson map of 1829 was considered by the General Land Office as the map of definite location of the canal. While roughly similar, the Post and Paul map of 1824, and the Thompson map of 1829 do not show the same canal location.

Under the Act of March 2, 1827, the State selected the odd-numbered sections on either side of the canal route shown by the Thompson map, and these sections were certified to the State by the General Land Office with the approval of the President of the United States.

**The Act of June 6, 1834:** As of March 1, 1833, the time limit provided in the Federal Act of March 2, 1827 for starting construction had passed. By Act of March 2, 1833, however, Congress amended the Act of 1827 so as to permit the State to build a railroad in lieu of a canal, and extended the time limits for starting and completing construction. The Act of March 30, 1822 is not referred to either in the Act of March 2, 1827 or the Act of March 2, 1833.

On March 1, 1833, the General Assembly repealed all existing State legislation relating to the canal, and no further legislation was enacted until February 10, 1835.

As of June 6, 1834, the time limit for completion of the canal, as provided in the Federal Act of March 30, 1822, had passed, the canal had not been started, and there was no provision in law for proceeding with the canal project.

How, or if, Congress considered these facts is not known, but, on June 6, 1834, Congress authorized the sale of public lands in northern Illinois, and included in the sale any lands that might have been, up to that time, in fact or theory, reserved from sale by the United States and set aside for the use of the State as right of way for a canal under any previous act or acts of Congress.

By the Act of June 6, 1834, Congress authorized the President to cause to be sold:

"All the lands lying in said land districts, at the land offices in the respective districts in which the land so offered is embraced, reserving only section 16 in each township, the tract reserved for the village of Galena, such other tracts as have been granted to individuals and the State of Illinois, and such reservations as the President may deem necessary to retain for military posts, any law of Congress heretofore existing to the contrary notwithstanding."

By Presidential Proclamation of February 12, 1835, these lands, including the alternate sections reserved to the United States by the Act of 1827, were placed on sale by the General Land Office. These sections were sold in their entirety, no part thereof being reserved from sale. A careful study of the record does not show that the State raised any objection to the sale of these sections, including any part or parts thereof as might, in theory or fact, have been reserved from sale under previous acts of Congress as right of way for a canal.

The above events are related to later litigation, it being held by the U. S. Supreme Court that the Act of 1822 was abandoned upon the passage of the Act of 1827. This court held, in effect, that since the canal would have to pass through the sections reserved to the United States, the Act of 1827 must have implied a grant of right of way through the reserved sections or otherwise the canal could not be built. However this may have been as of 1827, it will be seen that the canal had not been started as of June 1834 and that there was no provision in law for construction. The sale of the reserved sections by the United States would not operate to prevent the future construction of the canal in any way. When and if, after June 1834, the State decided to proceed with construction of the canal, the necessary rights of way could be acquired from the United States or the private landowner by direct purchase or such other form of acquisition of right of way as the State might select.

**The Location of the Canal:** The location of the canal, "as built," appears to be of considerable importance, particularly as related to litigation. The principal facts relating to location may be summarized as follows:

The canal line was first located upon the ground, substantially in its present location, in the year 1836. The "as built" location does not follow the route of the Post and Paul map of 1824 or the route of the Thompson map of 1829. The relation of the canal as located in 1836 to the previous surveys was stated by the Chief Engineer in his report for 1836 as follows:

"In making the examinations the present season little or no aid has been derived from the facts collected in previous surveys as not a single field book of these surveys has been obtained, and only the general results were known which have been presented to the public in the reports."

A comparison of the various canal routes is shown by exhibit 6. It will be seen that the canal, "as built," passes through numerous land sections that would be unaffected by either the Post and Paul or the Thompson routes. It may further be noted that the canal, "as built," was not located or constructed through the public lands of the United States, but was located and constructed after title to some, if not all, of the lands involved had passed from the United States, either by grant to the State, as in the odd-numbered sections and the school sections, or to private purchasers in the even-numbered sections other than school sections.

**The Canal Right of Way:** On January 9, 1836, the General Assembly repealed the Act of February 10, 1835 and enacted new legislation providing for construction of the canal. The later Act provided that, in constructing the canal, ninety feet on either side was to be reserved to enlarge its capacity. The Commissioners were empowered to enter upon and use any lands, and so forth, necessary for construction of the canal. In 1837, the Act of 1836 was amended and a procedure set up for adjustment of damage claims, and for the taking of lands needed for rights of way, hydraulic, or other purposes. Under this procedure, the Circuit Courts were made courts of record in all matters pertaining to taking of lands for rights of way and the adjustment of damage claims.

By the Act of 1837, the Commissioners were instructed to insist upon the right of the State to the right of way through and upon all lands heretofore sold or granted by the State. Should this right not be upheld by the courts, then the rights of way were to be secured by the court procedure established for other cases.

There appears to be nothing in the State legislative acts relating to construction of the canal to indicate that the State asserted ownership of a right of way through the even-numbered sections pursuant to any act of Congress. The State did, however, establish, as shown by the Act of 1837, a procedure for purchase or condemnation of rights of way whenever the right to construct the canal over the necessary lands was questioned.

In the school sections (No. 16) some, if not all, of the lands now occupied by the canal were sold by the school authorities before the canal was located or constructed.

In the odd-numbered sections granted to the State in 1827, it would appear, from the language of the Act of 1837 and other data, that a few tracts of land now crossed by the canal were sold by the State prior to location of the canal.

At the time the canal was completed, some four-fifths of the lands in the odd-numbered sections granted to the State in 1827 were unsold. When sales were resumed under the trusteeship,

the lands considered necessary for the canal were reserved from sale.

What right, title, or interest the State may have acquired in the canal lands, particularly in the even-numbered sections, including the school sections, through proceedings under the Act of 1837 is, of course, a legal problem beyond the scope of this report. The canal records evidently contain little or no information as to proceedings relating to acquisition of rights of way under the Act of 1837.

**The Canal Boundaries:** In 1847, subsequent to final location of the canal, the Trustees ordered:

"The Engineer shall cause a plan of the canal and the lands immediately adjacent thereto to be made upon a scale of sufficient size to represent clearly the position of the dividing or boundary line of every individual owner upon the line, and the direction of said boundary line for 20 rods or more and whenever the feeder lines may be determined upon the same shall be done in reference to them in order that there may be on file at the Canal office the means of knowing precisely the situation and extent on the line of Canal of all owners of private or individual property as well as of that belonging to the Canal itself."

In accordance with these instructions, a survey of the Canal was made and a set of maps prepared covering each section through which the canal passes. These maps show the so-called 90-foot reserve lines and the "canal" lines. They are the only maps or records known to have been made in connection with the construction of the canal that show the canal, "as built," and the canal lands, connected to the public land lines or section corners by courses and distances. These plats have always been on file in the Canal Office as directed by the Trustees, but were apparently never recorded as a public record. The legal status of this survey and the maps, as evidence of ownership, has been debated but so far known has never been formally ruled upon. Their relation to a possible claim to right of way based on applicability of the Acts of 1822 or 1827 was considered by the U.S. Supreme Court in *Werling v. Ingersoll* as follows:

"It was not until 1848, eleven years after the work of construction was commenced and a year after the completion of the canal, as is stated by counsel for plaintiffs in error in his brief, that a survey was made of the ninety feet strip on each side of the canal from one end to the other, and the lines of that survey marked on maps under the directions of the canal commissioners, and the maps and profiles of the survey filed in the office of the state canal commissioners, but not with the Commissioner of the General Land Office or in the Treasury Department of Washington. This action of the canal commissioners was a mere *ex parte* assertion made by state officials upon their own maps, nearly twenty years after the filing of the map in the Treasury Department, indicating a possible claim on behalf of the State, but never laid down on any map filed in Washington."

One feature of the canal boundary survey that may be mentioned is that of how the 90-foot lines should be located if the



Act of 1822 be considered to apply. The General Land Office apparently considered that these lines would be laid off from the center line of the canal, giving a 180-foot right of way. Others have considered that these reserve lines would be properly laid off from the water margin, thus giving a 240-foot right of way. The reserve lines as laid off by the Trustees conform to neither of these interpretations.

**The Case of Werling v. Ingersoll:** In 1899, a test case of ownership involving the State and one Ingersoll, an abutting property owner, was tried in the LaSalle County Circuit Court. By stipulation, the issues were limited to the single question:

"Is the State of Illinois the owner of a strip of land ninety feet in width along and contiguous to the south margin of the Illinois and Michigan Canal through Section 10, T33N, R3E."

The Circuit Court held that the State was not the owner, and this decision was affirmed by the Supreme Court of Illinois. The case was taken to the Supreme Court of the United States. The court said:

"Upon all the facts in the case it is plain that the act of 1822 was mutually abandoned by the parties so far as concerned the land grant after the passage of the act of 1827, and that the right of way through the reserved sections was treated and regarded as impliedly granted by the latter act, under which the larger grant was made, and that the map was filed under that act, and none was ever filed under the act of 1822. The State never took title to the strips of land ninety feet wide on each side of the route of the canal through the public lands, so far as related to the sections reserved to the United States by the act of 1827, of which section 10 herein involved was one."

In relation to the Act of 1822, the court said:

"It is not a question of forfeiture of the grant under the act of 1822. There was no forfeiture; it was a mutual abandonment of that act for the act of 1827. Taking all the facts into consideration, the State never acquired an absolute title to the ninety-foot strip, as by the language of the act of 1822 the use only was granted, and it required a subsequent filing of a map as provided for in that act before the right to the use was acquired and made definite and fixed as to any particular land, and before that time arrived the act of 1827 was passed, which was to a certain extent inconsistent with the former act, and the State in fact thence forth proceeded under the later act and filed its map thereunder and constructed the canal with reference thereto."

In relation to the Act of 1827, the Court said:

"The Congressional act of 1827, nevertheless implies by its language and subject matter the consent of Congress to a right of way through the public lands, and the subsequent state act of 1829, in the eleventh section, showed the width of the canal contemplated, which was the same as the prior and repealed act of 1825 provides for. Of course a towpath would be added. These two acts show the intention of the parties to proceed thereafter with reference to the act of 1827 and not under that of 1822. Work was not in fact commenced until in 1837."

**Effect of the Case of Werling v. Ingersoll: Evaluation of**

the effect of the Werling case as to titles, or claims to title, to the canal lands in the even-numbered sections is a legal problem, but the documentary record reflects certain facts pertaining to such evaluation. Insofar as the decision of the court holds, the State, under the Act of 1827, was granted a right of way of indeterminate width and unspecified nature through the even-numbered sections on the route shown by the Thompson map of 1829. The court further stated that, if the Post and Paul map had been filed as required by the Act of 1822, the State would probably be entitled to the use of the right of way specified in the Act of 1822, and located along that route. How this decision of the court is to be related to the right of way for a canal built in a different location than that shown by either map has apparently never been considered nor explained.

**The Interest of the United States in the Canal Lands:** In the discussions and arguments relative to the status of titles to the canal lands, there are various inferences that the United States has some reversionary interest in the fee in the canal lands or parts thereof. Such a reversionary interest, if any, has neither been asserted nor denied by the United States. So far as known this interest, if any, has not been specifically defined, nor the particular parts, if any, of the canal lands to which it might apply, specifically delineated. The definition of this interest, if any, of the United States is a legal problem not within the scope of this report. Certain facts, as established by the documentary record, are related to this problem.

Title in fee to the school sections (No. 16) passed to the State through legislation antecedent to, and unrelated to, the canal legislation. The Illinois Supreme Court has ruled (10 Ill. 548) that the Federal canal acts do not apply.

Title in fee to the odd-numbered sections passed to the State under the Act of 1827. This is shown by the language of the Act itself, by the opinion of the Congressional Commission on the Public Lands, by the records and proceedings of the General Land Office, by the certificates of title issued to the State by the General Land Office with the approval of the President of the United States, and by the opinion of the Supreme Court of the United States. The Act of 1827 provided only that if the canal were not built, the proceeds from the sale of the granted lands sold and the lands remaining unsold would be returned to the United States. That the canal was built and operated during its economic life cannot be disputed.

On June 6, 1834, Congress authorized the public sale of the even-numbered sections reserved to the United States by the Act of 1827. This Act did not reserve from sale any lands that might, in theory or fact, have been set aside from sale by prior act of Congress and the use thereof vested in the State as right of way for the canal. So far as known, the State raised no objection to the sale. All the lands in the even-numbered sections

were evidently sold and patented without reference to a right of way for a canal. While no official ruling is known to have been made by the General Land Office, that office has expressed the opinion that the grant of the odd-numbered sections to the State in 1827, and the sale of the even-numbered sections under the Act of June 6, 1834, removed the reservations created by the Act of 1822.

By Act of July 1, 1947, the United States relinquished to the State of Illinois all right, title, or interest, if any, the United States might have in any part of the lands comprising the right of way of the canal. A condition was imposed to the effect that the lands were to be used for public purposes; otherwise the right, title, or interest, if any, would revert in the United States. Section 2 of the Act of 1947 reads:

"This act shall affect only such right, title and interest of the United States of America in and to the lands described in section 1 hereof as may have been retained by the United States of America in fee simple, as a reversionary interest, or otherwise, under the Acts of March 30, 1822, March 2, 1827 and March 2, 1833, and as has not been disposed of, prior to the approval of this Act, by the United States of America."

The documentary records indicate that all the lands now considered as canal lands were originally granted in fee simple, either to the State, as in the odd-numbered sections and school sections, or sold in fee simple to purchasers at public sale, as in the even-numbered sections. There appears to be no land in the sections crossed by the canal that was not disposed of by the United States prior to approval of the Act of July 1, 1947.

**The Interest of Abutting Property Owners:** In the original sale and patenting of the even-numbered sections through which the canal passes, such sales were apparently made without mention of any reservation of right of way for a canal. Examination of the Federal land registers for a few typical sections shows that all the land in such sections was sold, nothing being reserved. A typical patent issued for a tract of land now crossed by the canal shows no mention of right of way for a canal. The interest of the abutting property owners was expressed by the Secretary of War in 1944 as follows:

"Abutting property owners in the even-numbered sections between Chicago and Joliet hold deeds of title from the United States which they maintain now give them title to the canal right of way. The original sales of the even-numbered sections which had been reserved to the United States under the act of March 2, 1827 were made without any express reservation of the canal right of way or of the 90-foot strips mentioned in the act of March 30, 1822. So far as is known all of these sales occurred prior to completion of the canal in 1848."

The right, title, or interest, if any, of the abutting property owners in the canal lands, or parts thereof, is a matter of legal or judicial determination. The principal documentary material that would seem to relate to the problem are the previously out-

lined decision of the U.S. Supreme Court in the Werling case, the time of definite location, the physical location of the canal, "as built," the conditions of sale by the United States, and the arrangements, if any, that may have been made with individual landowners under the provisions of the Act of 1837 relating to the acquisition of rights of way.

**The Status of the Feeder Canals:** Several feeder canals were built in connection with the main canal, but such feeders were not shown on either the Post and Paul map of 1824 or the Thompson map of 1829.

In the case of the Wabash and Erie Canal in Indiana, the General Land Office (exhibit 5) apparently ruled that feeders were not to be considered a part of the canal insofar as related to the acts of Congress concerning the canal.

In the final adjustment of the land grant to Illinois, under the Act of 1827, the length of the feeders was not included in the total length of canal used in computing the quantity of land to be granted to the State. Presumably the same condition applied in Illinois as in Indiana, that the feeders were not considered as a part of the canal by the General Land Office.

**The Problem of Intercepted Drainage:** In the construction of the canal, the natural drainage network was more or less altered. Various drainage channels were intercepted, and surface drainage was both taken into and discharged from the canal at points remote from the conditions of natural drainage. Certain portions of the canal now serve, in effect, as artificial drainage channels. A further unresolved problem is the nature and extent, if any, of the State's responsibility to maintain the drainage lines established by the canal upon completion, and the effect of sale upon this responsibility.

## CHAPTER 2

### COMMENTS OF THE ATTORNEY GENERAL OF ILLINOIS

"LATHAM CASTLE  
ATTORNEY GENERAL  
State of Illinois  
Springfield

December 17, 1956

FILE NO. 343

WATERS AND WATERWAYS:

Illinois and Michigan Canal

Title of the State of Illinois

Honorable E. A. Rosenstone

Director

Department of Public Works and Buildings

Springfield, Illinois

Dear Sir:

I have your letter of November 26, 1956, with copy of "Summary of Basic Problems and Related Data" concerning the Illinois and Michigan Canal. You request that I review and comment on this material.

You set forth the following basic problems:

- (a) To what specific parts, if any, of the canal lands did the State take consummate legal title as a result of acts of Congress.
- (b) To what specific parts, if any, of the canal lands did the State acquire no right, title or interest whatsoever, as a result of acts of Congress.
- (c) To what specific parts, if any, of the canal lands did the State acquire some right, title or interest, but of lesser degree than the consummate legal title, as a result of acts of Congress.
- (d) For those specific parts, if any, of the canal lands to which the State has acquired some right, title or interest of lesser degree than the consummate legal title, as a result of acts of Congress, what is the specific nature of this right, title or interest.
- (e) For those specific parts, if any, of the canal lands to which the State has acquired some right, title or interest of lesser degree than the consummate legal title as a result of prior acts of Congress, what further legislative action or judicial process, if any, would serve to perfect this right, title or interest into a consummate legal title.
- (f) For those specific parts, if any, of the canal lands to

which the State acquired no right, title or interest whatsoever as a result of acts of Congress, is there any legal method whereby the State, in consideration of the long occupancy of the land by the canal, could establish consummate legal title in the State.

- (g) For those specific parts, if any, of the canal lands to which the State acquired some right, title or interest of lesser degree than the consummate legal title as a result of acts of Congress, and where this interest cannot be perfected into the consummate legal title by legislative action or judicial process, is there any legal method whereby the State, in consideration of the long occupancy of the land by the canal, could establish consummate legal title in the State.

You have previously furnished me with a documentary history of the Illinois and Michigan Canal. This documentary history is a painstaking, complete and brilliant work of research.

My discussion will be a general one and will not appertain to any specific portion of the canal. Evaluation of the title status of any specific tract could be made only after examination of an abstract of title to or the title documents of record affecting that particular tract. However, there are certain general considerations which do have bearing on the State's title in and to the property occupied by the canal. These fall into four categories, and my general discussion will be divided into four divisions, as follows:

- I. Title to the Canal in odd-numbered sections;
- II. Title to the Canal in even-numbered sections other than school sections where the canal as constructed followed the Thompson map;
- III. Title to the Canal in the even-numbered sections other than school sections where the canal as constructed did not follow the Thompson map; and
- IV. Title to the Canal in school section 16.

The first Federal statute relating to the Illinois and Michigan Canal was the Act of March 30, 1822 (3 U.S. Stat. at Large, p. 659), which provides in part as follows:

*"Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the State of Illinois be, and is hereby authorized to survey and mark, through the public lands of the United States, the route of the canal connecting the Illinois River with the southern bend of Lake Michigan; and ninety feet of land on each side of said canal shall be forever reserved from any sale to be made by the United States, except in the cases hereinafter provided for, and the use thereof forever shall be, and the same is hereby vested in the said State for a canal, and, for no other purpose whatever; on condition, however, that if the said State does not survey and direct by law said canal to be opened, and return a complete map thereof to the Treasury Department, within three years from and after the passing of this act; or if the said canal be not completed, suitable for navigation within twelve years thereafter; or if said ground shall ever cease to be occupied by, and used for, a canal, suitable for navigation; the reservation and grant hereby made shall be void and of none effect: \* \* \**

"Sec. 2. *And be it further enacted*, That every section of land through which said canal route may pass, shall be, and the same is hereby, reserved from future sale, until hereafter specially directed by law: and the said State is hereby authorized and permitted, without waste, to use any materials on the public lands adjacent to said canal, that may be necessary for its construction."

It will be noted, from the above quoted provisions in the 1822 Act, that ninety feet of land on each side of the canal connecting the Illinois River with the southern bend of Lake Michigan was to be forever reserved from any sale to be made by the United States. Also, the use of said land was to be vested in the State of Illinois for a canal and for no other purpose whatsoever. Certain conditions were attached to said reservation and grant, one of them being that said reservation and grant was to be void if the State did not survey and direct by law said canal to be opened and return a complete map thereof to the Treasury Department within three years from and after the passage of the Act.

In 1826, the Illinois General Assembly petitioned Congress for a grant of land to aid in the construction of said canal. (Laws 1825, 2nd Session, held in 1826, p. 97.)

Thereafter, on March 2, 1827, Congress passed an Act (4 U.S. Stat. at Large, p. 234), the provisions of said Act being as follows:

*"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, THAT THERE BE, AND HEREBY IS, GRANTED TO THE STATE OF ILLINOIS, FOR THE PURPOSE OF AIDING THE SAID STATE IN OPENING A CANAL TO UNITE THE WATERS OF THE ILLINOIS RIVER WITH THOSE OF LAKE MICHIGAN, A QUANTITY OF LAND EQUAL TO ONE-HALF OF FIVE SECTIONS IN WIDTH, ON EACH SIDE OF SAID CANAL, AND RESERVING EACH ALTERNATE SECTION TO THE UNITED STATES, to be selected by the Commissioner of the land office, under the direction of the President of the United States, from one end of the said canal to the other; and the said lands shall be subject to the disposal of the legislature of the said state, for the purpose aforesaid, and no other: Provided, that the said canal, when completed, shall be and forever remain, a public highway for the use of the government of the United States, free from any toll, or other charge whatever, for any property of the United States, or persons in their service, passing through the same: Provided, that said canal shall be commenced within five years, and completed in twenty years or the state shall be bound to pay to the United States the amount of any lands previously sold, and that the title to purchasers under the State shall be valid.*

"Sec. 2. *And be it further enacted*, That so soon as the route of the said canal shall be located and agreed on by the said State, it shall be the duty of the Governor thereof, or such other person or persons as may have been, or shall hereafter be, authorized to superintend the construction of said canal, to examine and ascertain the particular sections to which the said State will be entitled, under the provisions of this act, and report the same to the Secretary of the Treasury of the United States.

"Sec. 3. *And be it further enacted*, That the said State, under the authority of the legislature thereof, after the selection shall have been so made, shall have power to sell and convey the whole, or any part of the said land, and to give a TITLE IN FEE SIMPLE therefor, to whomsoever shall purchase the whole, or any part thereof." (Emphasis added)

It will be noted that said 1827 Act granted to the State of Illinois a quantity of land on each side of the canal, reserving, however, to the United States each alternate section, to be later selected. Subsequently, the odd-numbered sections were allotted to the State of Illinois and the even-numbered sections were designated as those reserved to the United States.

It will be further noted that the 1827 Act, *supra*, contains no reference to the 1822 Act, *supra*, nor to any ninety foot strips.

In 1829, the Illinois General Assembly passed an Act providing for the construction of the Illinois and Michigan Canal. (Laws 1829, p. 14.) In this same year, 1829, the map of the proposed route of the canal (Thompson Map) was filed in the Treasury Department of the United States.

By an Act of July 1, 1947 (61 Stat., p. 237), Congress relinquished to the State of Illinois certain right, title or interest of the United States, said Act providing in part as follows:

*"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That, for the purpose of enabling the State of Illinois to use the lands now occupied by the Illinois and Michigan Canal for highway purposes, there is hereby relinquished to the State of Illinois all such right, title, and interest, if any, as the United States of America may have in and to any parts of the land comprising the right of way of the Illinois and Michigan Canal, as the same was routed and constructed through the public lands of the United States of America in the counties of Cook, Will, Grundy, DuPage, and LaSalle, in the State of Illinois, pursuant to the provisions, insofar as applicable, of the Acts of March 30, 1822 (3 Stat. 659), March 2, 1827 (4 Stat. 234), and March 2, 1833 (4 Stat. 662) and in and to any part of the ninety feet of land on each side of the canal for the entire length thereof referred to in the Act of March 30, 1822 (3 Stat. 659); ON CONDITION, however, that if any of the lands with respect to which any right, title, or interest is hereby relinquished by the United States of America to the State of Illinois SHALL EVER CEASE TO BE OCCUPIED AND USED FOR HIGHWAY, PARK, RECREATIONAL, OR ANY OTHER PUBLIC PURPOSES THEN, and in that event, all such right, title, and interest, if any, in or to the lands which have ceased to be so occupied and used shall thereupon revert in the United States of America.

"Sec. 2. This Act shall affect only such right, title and interest of the United States of America in and to the lands described in section 1 hereof as may have been retained by the United States of America, in fee simple, as a reversionary interest, or otherwise, under the Acts of March 30, 1822 (3 Stat. 659), March 2, 1827 (4 Stat. 234), and March 2, 1833 (4 Stat. 662), and as has not been disposed of, prior to the approval of this Act, by the United States of America.

"Sec. 3. *Provided that*, to protect the rights of navigation in or over the lands comprising the right-of-way of the Illinois



and Michigan Canal and the ninety feet of land on each side of the canal in the sections or parts of sections hereinafter enumerated, the State of Illinois or any authorized agent thereof shall not change in any manner the physical conditions which exist at the time of the passage of this Act, unless such changes have been recommended by the Chief of Engineers and authorized by the Secretary of War; this to include construction, erection, or removal of any structure, excavation, or deposition of materials from or on such lands, and so forth. \* \* \*

"Authorizations issued under the provisions of this Act shall contain the following clause: 'If future operations by the United States require removal or alteration in the structure or the work herein authorized, the State of Illinois will be required, upon due notice from the Secretary of War, to remove or alter the work without expense to the United States so as to render navigation reasonably free, easy and unobstructed. No claim shall be made against the United States on account of any such removal or alteration'." (Emphasis added)

It will be noted that said Act of July 1, 1947, *supra*, merely relinquishes to the State of Illinois the right, title, and interest of the United States, if any, in and to the land comprising the right of way of the canal, and in and to the ninety foot strips on each side thereof, to be used for highway purposes or other public purposes mentioned in said Act. A condition is attached that, if said land shall ever cease to be used for said purposes, the title shall revert in the United States.

It will also be noted from Section 2 of said Act of July 1, 1947, *supra*, that said Act does not transfer to the State of Illinois any of the canal land or the ninety foot strips, title to which had been conveyed to third persons by the Federal government prior to the approval of said Act.

The Illinois General Assembly, by House Bill No. 986 of Sixty-fifth General Assembly, approved July 21, 1947 (Laws 1947, p. 334), accepted, upon behalf of the State of Illinois, the title conveyed by said Congressional Act of July 1, 1947.

## I

### TITLE TO CANAL IN ODD-NUMBERED SECTIONS

In respect to the title to the right of way of the canal in odd-numbered sections, as well as the land immediately adjacent to the canal in the odd-numbered sections, same was vested in the State of Illinois, in fee simple absolute, by the 1827 Act of Congress. (See Sec. 3 of the 1827 Act; also, *Werling v. Ingersoll*, 181 U.S. 131, affirming 182 Ill. 25; *City of Chicago v. McGraw*, 75 Ill. 566; *Wells v. Wells*, 262 Ill. 320).

The State of Illinois, in the odd-numbered sections, has conveyed out lands within the so-called ninety foot reserve strips without reserving same from the conveyance. (*Dooner v. United States*, 95 U.S. Court of Claims, 392). Prior to 1874 the canal commissioner had power to sell canal lands (*Diederich v. Rose*, 228 Ill. 610, 614). This power was taken away in 1874, Revised Statutes 1874, p. 188; see *Diederich v. Rose*, *supra*.

In 1905, said 1874 act was amended to permit sale of lands within the ninety foot strips. (Laws 1905, p. 81). Except for minor alterations, not material to this discussion, the 1905 amendatory provisions are substantially in effect today. (See Illinois Revised Statutes 1955, chapter 19, paragraph 8, subsection 8.)

It is submitted that the Act of Congress of July 1, 1947, will have no effect whatsoever upon the right of way of the canal or lands adjacent thereto in odd-numbered sections, since the State of Illinois was already the owner in fee simple absolute of said right of way and lands by virtue of the 1827 Act.

I conclude and it is my opinion that the title acquired by the State of Illinois in and to the canal and canal lands in the odd-numbered sections traversed by the canal was a title in fee simple absolute. Except where the State may have subsequently conveyed said property, it still owns the same in fee simple.

## II

### EVEN-NUMBERED SECTIONS OTHER THAN SCHOOL SECTIONS—THOMPSON MAP

In *Werling v. Ingersoll* (181 U.S. 131), the Supreme Court of the United States, in affirming the Illinois Supreme Court, (*Werling v. Ingersoll*, 182 Ill. 25), held that the State of Illinois had failed to fulfill the conditions of the 1822 Act of Congress and that there had been a mutual abandonment of the 1822 Act for the 1827 Act of Congress. The court held that the State of Illinois took no title or interest in and to the ninety foot so-called reserve strips in an even-numbered section, but acquired, under the 1827 Act, an implied right of way through the even-numbered sections. Such right of way extended to the land necessary to be used for the canal (see p. 141 of opinion), which would include the canal bed, towpath and undoubtedly so much of the berm bank (opposite the towpath) as would be necessary for the proper use and protection of the canal.

It is implicit in the decision of *Werling v. Ingersoll*, 181 U.S. 131, 140-141, that the map filed in the Treasury Department in 1829 (Thompson map) showed the proposed route of the canal, and the right of way granted through the even-numbered sections was granted pursuant to the location of the canal as shown on this map. To the extent that the canal, as actually constructed, followed the location shown on the Thompson map, the discussion in this particular Division II is relevant and is so limited.

In the even-numbered sections, reserved to the United States, the United States has sold land immediately adjacent to the canal bed, and within the so-called ninety foot reserve strips without making any reservation in the patent for said ninety foot strips (*Wells v. Wells*, 262 Ill. 320).

It has been noted that in the even-numbered sections the State of Illinois was given no title under the 1827 Act, but acquired a right of way by necessity or implication. (*Werling v. Ingersoll*, 181 U.S. 131). Whether such a grant carried the fee or not is a perplexing question. (See *New Mexico v. U. S. Trust Co.*, 172 U.S. 171; *Northern Pac. Ry. Co. v. Townsend*, 190 U.S. 267; *Great Northern Ry. Co. v. U. S.*, 315 U.S. 262.)

Since the land grant occurred in 1827, prior to the change in Congressional policy in 1871, as discussed in the *Great Northern Railway* case, *supra*, it would seem that the grant of right of way was a grant of a "limited", "base", or "qualified" fee. Or as stated in the *Northern Pacific Railway* case, *supra*, as a "limited fee, made on an implied condition of reverter."

However, in respect to the right of way of the canal, it would seem that the Act of Congress of July 1, 1947, *supra*, clearly relinquished to the State of Illinois such reversionary interest as was held by the United States. The title to such right of way, in the even-numbered sections, is thus now vested in the State of Illinois in fee simple, subject to the conditions contained in said 1947 Act. Such title of the State of Illinois is thus a conditional fee. In *People v. McDonnell*, 362 Ill. 114, it was held that there had been no abandonment by the State of any of its right in the canal.

### III

#### EVEN-NUMBERED SECTIONS OTHER THAN SCHOOL SECTIONS—ADVERSE POSSESSION

From Exhibit 6 of the documentary history submitted, it would appear that the canal, as actually constructed, rarely, if ever, followed the route delineated on the Thompson map. In other words, through the even-numbered sections, the canal as constructed did not follow the right of way for same granted by the Federal government. The discussion under this point is limited to this factual situation in the even-numbered sections other than section 16.

Construction of the Illinois and Michigan Canal was started in 1836 and was completed in 1848. For over one hundred years the State of Illinois has asserted its right in and to said canal as State property.

It is believed that the title of the State of Illinois to the land constituting the canal may be predicated upon the doctrine of adverse possession in the absence of any deed of record from the patentees thereof or subsequent grantees to the State for canal purposes, or other evidence of title.

In 2 Corpus Juris at page 228, it is stated that adverse possession by the State for the statutory period will give title by adverse possession.

In 9 American Jurisprudence, at page 320, it is stated as follows:

"If for any reason the state should fail to acquire a valid title to land appropriated for canal purposes, its claim thereto may be perfected by adverse possession."

It has been held that adverse possession which may, by lapse of time, constitute a legal title, must be hostile or adverse in its origin, actual, visible, notorious, exclusive and continuous and under claim of ownership for the twenty-year period. (*Jaster v. Spikings*, 312 Ill. 170; *Thomas v. Durchslag*, 404 Ill. 581; *Leonard v. Leonard*, 369 Ill. 572.)

It is believed that the title acquired by the State in respect to any adverse possession of canal lands is a fee simple title and not merely an easement. In 9 Corpus Juris, at page 1127, it is stated as follows:

"The government, through its laws or the charters granted by it, determines as to the character of the interest to be taken in the property to be acquired for a canal, which interest may be either the fee or an easement. To give an absolute title, technical words are not necessary if the language of the statute or the character is sufficiently broad. The general rule is, that, where lands are acquired for a public use, only an easement is taken therein, unless the taking of a greater estate, as a fee simple, is expressly authorized by law. In several States particular statutes have been held to vest a fee simple in property taken for canal purposes; but other statutes are construed not to require the acquisition of title in fee to the lands appropriated for canal purposes, and are further construed to invest in certain public officials the authority to determine what estate or interest is required for the use of a state canal."

In 9 Corpus Juris, at page 1128, it is stated as follows:

"Where the fee simple in the land is taken for the construction of a canal, the former owner of course retains no rights therein, such as the right to use the water or to take ice therefrom."

In the case of *Card v. McCaleb*, 69 Ill. 314, it was held that a statute which provided that persons residing upon the line of the Illinois and Michigan Canal shall have the right to cut ice therefrom was entirely within the control of the legislature. If the State of Illinois owned merely an easement, the right to cut ice would be vested in the owner of the fee title underlying the canal. (Gould on Waters, 2d ed., p. 368.) In such case, the matter would not be entirely within the control of the legislature. It is implicit from this decision that the State of Illinois was owner of the fee of the canal bed, and not of a mere easement.

In the case of *Eldridge v. Binghamton* (N. Y. 1890), 24 N. E. 462, it was held that if the State enters into possession of land for canal purposes under an unconstitutional statute claiming to be the owner of the fee there will be sufficient claim to title to ripen into title by adverse possession.

In the case of *Logansport v. Shirk* (Ind. 1883) 88 Ind. 563,

it was held that the appropriation by the State of a strip of land in a public street, and the construction thereon of a canal, and its use for that purpose for many years, vested a fee simple title thereto in the State.

The above discussion is relevant as against patentees or subsequent grantees. I assume that all lands have been patented out by the United States. If there are some lands in these even-numbered sections which have not been patented out by the United States, the title or rights of the United States therein cannot be barred by adverse possession. (2 Corpus Juris Secundum, p. 516; 2 Corpus Juris, p. 213.)

It would seem clear that possession by the State of Illinois of the Illinois and Michigan Canal clearly complies with the requirements above stated for the acquisition of title by adverse possession. If there are some lands which have not been patented out by the United States, the title to such lands cannot be barred by adverse possession of the State of Illinois. Such right or title as was held by the United States in the canal would pass to the State of Illinois pursuant to Act of Congress in 1917, subject to the conditions in said Act.

Assuming that the United States has patented out all lands in these even-numbered sections, which is most likely, and that there is therefore no question of the doctrine of adverse possession being applicable to the United States, I am of the opinion that in the even-numbered sections other than section 16, where the canal, as constructed, did not follow the Thompson map, the State of Illinois through adverse possession now holds a title in fee simple absolute.

#### IV

#### TITLE IN SCHOOL SECTIONS

The discussion under this point is limited to a discussion of the right of way of the canal in the even-numbered sections number 16. (School sections).

The State of Illinois was admitted to the Federal Union pursuant to the Enabling Act of Congress of April 18, 1818, (3 U.S. Stat. at L., 428). Section 6 of said Enabling Act provides in part as follows:

*"Sec. 6. And be it further enacted, That the following propositions be and the same are hereby offered to the convention of the said territory of Illinois, when formed, for their free acceptance or rejection, which if accepted by the convention, shall be obligatory upon the United States and said State.*

*"FIRST. THAT SECTION NUMBERED SIXTEEN, IN EVERY TOWNSHIP, and, when such section has been sold or otherwise disposed of, other lands equivalent thereto, and as contiguous as may be, SHALL BE GRANTED TO THE STATE FOR THE USE OF THE INHABITANTS OF SUCH TOWNSHIP, FOR THE USE OF SCHOOLS."* (Emphasis added)

The ordinance of Illinois accepting said Enabling Act,

adopted by the Constitutional Convention of the State of Illinois at Kaskaskia on August 26, 1818 (Laws 1819, app. p. 21), provides in part as follows:

"Whereas, the Congress of the United States, in the Act entitled 'An Act to enable the people of the Illinois territory to form a Constitution and State government, and for the admission of such State into the Union on an equal footing with the original States,' passed the 18th of April, 1818, have offered to this convention for their free acceptance or rejection, the following propositions which, if accepted by the convention, are to be obligatory upon the United States, viz.:

"1. That section numbered 16 in every township, and when such section has been sold, or otherwise disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to the State for the use of the inhabitants of such township for the use of schools."

It will thus be noted that by the Enabling Act of 1818, the title to Section 16 in each township (except as above noted) passed to the State of Illinois, in trust for the use of the inhabitants of such township for school purposes.

In the case of *Board of Trustees of Illinois-Michigan Canal v. Haven*, 10 Ill. 548 (5 Gilman 548), it was held that the Acts of Congress of March 30, 1822, and March 2, 1827, did not apply to the 16th sections. The court held that said 16th sections were not public lands at the time of passage of the 1822 Act, having been granted to the State for the use of schools under the Enabling Act of Congress of April 18, 1818, and the Ordinance adopted by the Constitutional Convention of August 26, 1818. In reaching this conclusion, the court said at page 442 of its opinion:

"It is first contended, that by an act of Congress, approved March 30, 1822, the State of Illinois was authorized to survey and mark through the public lands of the United States the route of the canal connecting the Illinois river with the southern bend of Lake Michigan, and ninety feet on each side of said canal was forever reserved from any sale to be made by the United States, and vested in said State for a canal; wherefore it is said that the appellees are deprived of any right which they might otherwise have to any water or land within ninety feet of said canal. It is to be observed, that a certain time was provided by the act of congress within which the State was to commence and complete said canal, or, upon failure to do so, it was declared that the reservation and grant made by said act should be void and of none effect. Without stopping to inquire whether the right of way secured by the act of congress was forfeited, so as to revert ipso facto in the government, upon failure of the State to commence and complete the canal within the time limited by the act, or whether, as is contended, the conditions of the act of 1822 were waived, and the time for commencing and completing the canal extended by an act of congress passed March 2, 1827, it will be sufficient to show THAT NEITHER OF SAID ACTS OF CONGRESS CAN HAVE ANY BEARING UPON THE RIGHTS OF THE APPELLEES, admitting even that they are of the character, and contain all that is contended for by the appellants.

"THE LOTS OF THE APPELLEES WERE SITUATE ON SECTION SIXTEEN, WHICH WAS GRANTED TO THE

STATE FOR THE USE OF SCHOOLS, PRIOR TO THE PASSAGE OF THE ACT OF 1822. It was not, therefore, public land at the passage of the act, and consequently no part of it could at that time have been reserved from sale by the United States." (Emphasis added)

In discussing the title vested by said Enabling Act of 1818, it is stated in the case of *Trustees of Schools v. Lilly*, 373 Ill. 431, at page 439, as follows:

"By the Enabling Act, (3 U.S. Stat. at L., 428; S.H. Stat., Const. p. 107) the Congress, on behalf of the United States, offered the People of Illinois certain powers whereby they might become organized into a State. The first subparagraph of section 6, of that act provided; 'That section numbered sixteen, in every township, and, when such section has been sold or otherwise disposed of, other lands, equivalent thereto, and as contiguous as may be, shall be granted to the State, for the use of the inhabitants of such township, for the use of schools.' The act further provided that, upon acceptance by Illinois, its provisions shall be obligatory upon the State and the United States. This Enabling Act was accepted by the constitutional convention at Kaskaskia AND THEREBY TITLE TO SECTION 16 IN EACH TOWNSHIP (except as above noted) PASSED TO THE STATE OF ILLINOIS, IN TRUST FOR THE USE OF THE INHABITANTS OF SUCH TOWNSHIP FOR SCHOOL PURPOSES. \* \* \* Without attempting any detailed review of all the statutory provisions it may be said that, EXCEPT FOR A BARE LEGAL TITLE IN THE STATE, THE ENTIRE BENEFICIAL USE OF EACH SECTION 16, HAS BEEN IN THE INHABITANTS OF THE TOWNSHIP IN WHICH IT IS SITUATED UNDER THE DIRECT SUPERVISION AND CONTROL OF LOCALLY ELECTED PUBLIC OFFICIALS." (Emphasis added)

It would therefore seem that title to Section 16 was initially vested pursuant to the provisions of the Enabling Act of 1818. It would seem that the State, under said Enabling Act, held a bare legal title, and that the entire beneficial use of said Section 16 was vested in the inhabitants of the township in which said Section is situated, for school purposes.

Provisions relating to common school lands in each township (Section 16) are now found in article 13 of the School Code. (Pars. 13-1 to 13-27, inclusive, Chapter 122, Ill. Rev. Stat. 1955). In respect to issuance of patents by the Auditor of Public Accounts for said school lands, see paragraph 13-17, *supra*, which is substantially a recodification of prior laws of the subject. (See R. Laws 1829, p. 152, par. 8; Laws 1909, p. 342, 405.)

In the absence of any statement in the documentary history that lands in said section 16 had been conveyed to the State for canal purposes, I assume that there has been no conveyance of the land constituting the canal in said section 16 to the State of Illinois for canal purposes, either by means of an original patent of the Auditor of Public Accounts or by means of subsequent grants or conveyances from subsequent holders of the record title.

In the case of *Trustees of Schools v. Lilly*, 373 Ill. 431, it was held that in an action of ejectment by said school trustees

against one in possession of land which was situated in section 16 of a certain township, the claim of the school trustees resting on the grounds that the land had been given to the State as school land and that there was no record of any patent thereto by the State having been issued, evidence of exclusive possession by the defendant or his predecessor under claim of ownership for eighty years, including fencing, cultivation and use of the land, and of the assessment and payment of taxes for seventy-eight years, was sufficient to support the presumption of an ancient grant so as to defeat the plaintiff's claim.

Construction of the Illinois and Michigan Canal was started in 1836 and was completed in 1848. It is thus apparent that for over one hundred years the State of Illinois has asserted its right in and to said canal as State property.

It would therefore seem that the doctrine of presumption of an ancient grant is applicable to that portion of the Illinois and Michigan Canal which lies in any section 16, where there is no record of the conveyance of same to the State of Illinois for canal purposes. After one hundred years, because of the application of this doctrine, it is believed that one may safely assume that title is vested in the State of Illinois. (*Trustees of Schools v. Lilly, supra*; 2 C.J.S., p. 874.)

I am therefore of the opinion that by virtue of the doctrine of presumption of an ancient grant, title to the canal right of way in school sections 16 is vested in the State of Illinois in fee simple absolute.

The above discussion covers basic problems (a) through (d). In respect to basic problems (e) through (g), it would appear that such reversionary rights as are still retained by the United States could be conveyed to the State of Illinois unconditionally. The 1947 Act of Congress was a grant of a conditional fee, the condition being that the canal land was to be used and occupied for highway, park, recreational or other public purposes, and if not so used, the title shall revert in the United States.

It is of course axiomatic that the final determination of the title questions, which I have discussed herein, can only be resolved by judicial determination.

There are two other points which I wish to briefly discuss. In my view, the title of the State of Illinois is predicated upon the 1827 Act of Congress.

It will be noted that the 1827 Act of Congress contains a provision that the canal when completed shall be and forever remain a public highway for the use of the government of the United States, free from any toll or other charge, whatever, for any purpose of the United States, or persons in their service, passing through the same. I do not construe this as being more than a declaration intended to preserve the character of the canal as a free highway so far as government traffic was con-



cerned. The purpose was to prevent a discrimination against the traffic of the United States. This provision, designed to prevent discrimination against the United States in respect to water transportation, was a common statutory provision in this particular period. (See *Huse v. Glover*, 119 U.S. 543, 548.)

In the case of *Walsh v. Columbus Railroad Co.* 176 U.S. 469, it appeared that lands had been granted to the State of Ohio for canal purposes. The grant contains a proviso substantially the same as contained in the 1827 Act of Congress. It was held that the proper construction of the proviso was that the government should be entitled to free use of the canal only so long as it was maintained as a public highway and that the Act of the State of Ohio in abandoning the canal and leasing the canal right of way to a railroad company did not violate the contract clause of the Constitution.

In other words, in respect to this particular proviso, I cannot see any contractual obligation requiring the State to maintain the canal in perpetuity nor to justify me in saying that the State took these lands subject to such trust.

In your summary of basic problems you allude to the problem of intercepted drainage.

In respect to the canal having supplanted the natural drainage of the area through which it was constructed, it would seem that the canal, in this respect, would take on the nature and incidents of a natural watercourse. The rule is stated in 56 American Jurisprudence, pages 621-622, as follows:

"An artificial waterway or stream may, under some circumstances, have the characteristics and incidents of a natural watercourse. In determining the question, three things seem generally to be taken into consideration by the courts: (1) whether the way or stream is temporary or permanent; (2) the circumstances under which it was created; and, (3) the mode in which it has been used and enjoyed. Where the way is of a permanent character, and is created under circumstances indicating an intention that it shall become permanent, and it has been used consistently with such intention for a considerable period, it is generally regarded as stamped with the character of a natural watercourse, and treated, so far as the rules of law and the rights of the public or of individuals are concerned, as if it were of natural origin. \* \* \*"

The Illinois and Michigan Canal was an artificial waterway of a permanent character, and was created under circumstances indicating an intention that it should be permanent. For a long period of time, in respect to surface drainage, it has been regarded as stamped with the character of a natural watercourse. For drainage purposes, at least where it has supplanted the natural conditions, it would then seem that it should be treated as a natural watercourse.

The owner of lower land has no right to stop or impede the natural flow of surface water. (*Gough v. Gobel*, 2 Ill. 2d 577, 580). The owner of the servient heritage (lower land owner) cannot interfere with the natural flow of surface water to the

damage of the dominant heritage (upper land owner) and the owner of the dominant heritage has a natural easement over the land of the servient heritage for the natural flow of such surface water. (*Druce v. Blanchard*, 338 Ill. 211; *Deterding v. Central Illinois Service Co.*, 313 Ill. 562.) The mere conveyance of the canal, by itself, will not impede the flow of water nor obstruct surface drainage. If the grantee from the State of Illinois should obstruct the natural flow of surface water, he could be enjoined in equity. (*Gough v. Gobel*, 2 Ill. 2d 577; *Deterding v. Central Ill. Serv. Co.*, 313 Ill. 562.)

In my view the responsibility that the State has assumed for maintaining the canal as an artery of drainage is no more than the responsibility the State would assume in event that it owned lands upon which there was a creek or non-navigable river. The existence of such a natural watercourse would not preclude the State from conveying the land, including the natural watercourse. The grantee could not obstruct this natural watercourse and if he did so, could be enjoined in equity.

The Department of Public Works and Buildings should not impede or obstruct the flow of water now constituting the natural drainage conditions in the Illinois and Michigan Canal area, nor authorize others to do so. However, a conveyance, alone, is not such an obstruction. The duty would be on the grantee not to obstruct or impede the natural drainage conditions now existing.

Very truly yours,

/s/ Latham Castle

Attorney General"

## CHAPTER 3

### EARLY EVENTS IN THE CANAL HISTORY

**The Chicago Portage:** The low divide between the waters of Lake Michigan and those of the Des Plaines River was in use by the Indians as a carrying place long before the advent of the white man. The nature and facility of this portage was recorded in the annals of the French explorers, Joliet and Marquette, in 1673. The relation of the portage route to the geological history of the Great Lakes was pointed out by Victor Collot, French military engineer, as a result of explorations made in 1790. Collot said:

"There are moreover strong conjectures that the lakes Michigan and Superior emptied their waters formerly into this river (Mississippi). The evidence for this conjecture is, that when the waters are high, boats carrying from fifteen to twenty thousand weight pass from the Illinois River to the Lake Michigan, without portage, by traversing a marsh which joins the sources of the River Illinois with those of the River Chicago, which now discharges itself into the Lake Michigan. The Ouisconsin affords a similar proof."

**The Gallatin Report:** The need for improved land and water communications throughout the young but rapidly expanding nation, caused Congress to give attention to the question of internal improvements. In 1807, the Senate instructed the Secretary of the Treasury, Albert Gallatin, to report on the subject of roads and canals. Secretary Gallatin's report was quite extensive and did much to enhance the national interest in the subject of internal improvements by the United States. He mentions the Chicago Portage briefly, as follows:

"The Illinois River, which empties into the Mississippi above St. Louis, rises in a swamp, which, when the waters are high, affords a natural canoe navigation to the sources of Chicago creek, a short stream, which falls into Lake Michigan, at its southern extremity."

**Proceedings of the Eleventh Congress, second session, 1809-1810:** In the Eleventh Congress, legislation on the subject of Federal participation in internal improvements was introduced, but not enacted. The suggested canal at the Chicago Portage was, among others, urged for the consideration of Congress. In a long debate on February 10, 1810, Mr. Porter said:

"At the southwestern extremity of Lake Michigan, the most inconsiderable expense would open a canal between the waters of that lake and the Illinois River, one of the principal branches of the Mississippi. Nature has already made this connection nearly complete; and it is not uncommon for boats, in the spring of the year to pass from the lake into the Illinois, and from thence by the waters of the Illinois and Mississippi to New Orleans, without being taken out of the water."

The War of 1812 and its related problems necessitated postponement of questions relating to internal improvements by Congress for some years thereafter.

**The Indian Cessions of 1816:** As of 1816, the United States had acquired title, by Indian treaty, to the greater part of what is now Illinois. It had not, however, acquired title to the lands adjacent to Lake Michigan. In 1816, the Indian Commissioners for the Illinois Territory were instructed to treat for a tract of land which would connect the shores of Lake Michigan with the Illinois Purchase. By letter of May 7, 1816, the Secretary of War instructed the Commissioners, in part, as follows:

"Should the tribes inhabiting the country between the cession and the southwestern margin of Lake Michigan present themselves, you are required to sound their disposition to cede a district of country which will connect the lake with the Illinois Purchase. This cession would be of immense importance, and should be obtained, if practicable, at any expense, either of recession or purchase. In all other cases, importunity to cede is expressly interdicted."

On August 24, 1816, a treaty was concluded with the United Tribes of the Ottawa, Chippewa, and Potawatomi. By this treaty, the United States relinquished all claims to lands lying north of a due west line from the southern extremity of lake Michigan to the Mississippi River. The above tribes ceded to the United States a tract of land bounded as follows:

"Beginning on the left bank of the Fox River of Illinois, ten miles above the mouth of the said Fox River; thence running so as to cross Sandy Creek, ten miles above its mouth; thence in a direct line to a point ten miles north of the west end of the Portage, between Chicago Creek, which empties into Lake Michigan, and the River Desplaines, a fork of the Illinois; thence in a direct line to a point on Lake Michigan ten miles northward of the mouth of Chicago Creek; thence along the lake to a point ten miles southward of the mouth of Chicago Creek; thence in a direct line to a point on the Kankakee ten miles above its mouth; thence with the said Kankakee and the Illinois Rivers to the mouth of the Fox River and thence to the Beginning."

**Report of Major Stephen Long:** In 1816, Major Stephen Long was transferred from West Point to the Topographical Bureau of the War Department. He was assigned to the work of examining the portages of the Fox and Wisconsin Rivers and of exploring the headwaters of the Mississippi. On March 4, 1817, he reported to the War Department (appendix 1) on the subject of a canal to connect the Illinois River with Lake Michigan. Long's report is the first report of an engineering nature known to exist regarding a canal across the Chicago Portage. It emphasizes the importance of a canal connecting the Illinois and Chicago Rivers, and the supposed fact that its construction would be a simple and inexpensive matter.

**Proceedings of the Fifteenth Congress, first session, 1817-1818:** On December 11, 1817, a committee of the House of Representatives was instructed to investigate the expediency of pro-

viding by law for constructing a navigable canal to unite the waters of Lake Michigan with the waters of the Mississippi River. The results of such investigation, if any, do not appear on the record. During this session, Congress became involved in extensive debate over its constitutional powers to legislate for schemes of internal improvement. In this early period, there was grave doubt, not only in Congress, but also in the Executive Branch, as to such power on the part of the Federal Government.

On April 4, 1818, the House of Representatives instructed the Secretary of War, Mr. Calhoun, to report on:

"A plan for the application of such means as are within the power of Congress for the purpose of opening and constructing such roads and canals as may deserve and require the aid of Government, with a view to military operations in time of war; the transportation of munitions of war; and also a statement of the works of the nature above mentioned which have been commenced, the progress which has been made, and the means and prospect of their completion; together with such information as, in the opinion of the Secretary, shall be material in relation to the objects of the resolution."

**The Calhoun Report:** On January 7, 1819, the Secretary of War, Mr. Calhoun, presented his report (appendix 2) to the House of Representatives. Mr. Calhoun outlined the need and desirability of a good system of roads and canals both for the needs of commerce and for national defense. In relation to the proposed canal at Chicago, he said:

"If to these communications we add a road from Detroit to Ohio which has already been commenced, and a canal from the Illinois River to Lake Michigan, which the growing population of the State of Illinois renders very important, all the facilities which would be essential to carry on military operations in time of war, and the transportation of the munitions of war for the defense of the western portion of our Northern frontier, would be afforded."

Mr. Calhoun carefully declined discussion of the constitutional question as to the powers of Congress in the matter of internal improvements.

**The Chicago Portage in 1818:** An interesting description of the Chicago portage in 1818, compiled from the narrative of Gordon Hubbard, an employee of the American Fur Company and a member of the Illinois Brigade for that year, was reported by Solon Buck, as follows:

"On the evening of September 30, just twenty days after the departure from Mackinac, the expedition arrived at the mouth of the Calumet River, where it was met by a party of Indians returning from a visit to Chicago. They were drunk and started a fight among themselves in which several of their number were killed, necessitating the removal of the trading party to the opposite side of the river for safety. The members of the brigade spent a portion of the night in preparation for their arrival at Chicago. 'We started at dawn' says Hubbard. 'The morning was calm and bright, and we in our holiday attire, with flags flying, completed the last twelve miles of our lake voyage.' The brigade spent a few days at Chicago repairing the boats, and

then passed up the south branch of the Chicago River into Mud Lake, a sort of marsh, which drained partly into the Chicago River and partly into the Desplaines. The boats were half dragged, half floated, through this marsh to the waters of the Desplaines, while the goods were carried on the backs of the engagées. After three days of such labor, the portage was crossed, the boats were reloaded, and the voyage to the Illinois was begun. The water being very low, the progress of the brigade was slow and difficult, and it was three weeks before the expedition reached the mouth of the Fox River. Two days more brought the party to the foot of Starved Rock."

**The Northern Boundary of Illinois and the Canal:** The Ordinance of 1787 organized the "territory of the United States northwest of the river Ohio." The ordinance provided that the territory should be ultimately formed into not less than three, nor more than five, states. Should the establishment of more than three states be desirable, Congress was given power to form one or two states from that part of the territory "which lies north of an east and west line drawn through the southerly bend or extreme of Lake Michigan." When Indiana was admitted to the Union in 1816, its northern boundary was placed ten miles north of this "southern bend." In drafting the enabling bill for Illinois, the northern boundary was made "an east and west line drawn through a point ten miles north of the southern extreme of Lake Michigan." When the enabling bill was brought up in the House, the Illinois Territorial Delegate, Mr. Pope, immediately proposed an amendment to set the northern boundary at forty-two degrees and thirty minutes north latitude. This was agreed to, thus establishing the northern boundary of Illinois as an east-west line some 50 miles north of the latitude of the southern extremity of the lake. The purpose of the amendment was to give Illinois a coast on Lake Michigan and to insure that Chicago, the point at which the proposed canal had always been planned to connect with the lake, would be within the limits of Illinois. The Enabling Act was passed on April 18, 1818, and Illinois was formally admitted to the Union by Resolution of Congress, December 1, 1818, and approval thereof by the President, December 3, 1818.

**Report of Graham and Philips:** On April 4, 1819, the canal project was again called to the attention of the War Department by a report of an inspection of the canal route. This report (appendix 3) was made by Richard Graham and Joseph Philips, who had been Judge and Secretary, respectively, of the Illinois Territory. The report is much the same as that of Major Long, and points out the supposed ease and relative inexpense of a canal connection between the Illinois and Chicago Rivers.

## CHAPTER 4

### LEGISLATIVE HISTORY OF THE FEDERAL ACT OF MARCH 30, 1822

**Proceedings of the First General Assembly, first session, 1818:** The practicability of, and the need for a canal connecting the Illinois River with Lake Michigan had been recognized and discussed for many years. Efforts to make the canal a reality began with the admission of Illinois to the Federal Union as a Sovereign State.

In his message of October 10, 1818 to the First General Assembly, first session, Governor Bond made the following comment relating to the proposed canal:

"Possessed of a country not surpassed for the fertility of its soil, intersected and almost surrounded by lakes and rivers convenient for navigation, it is much to be regretted that the means requisite for the commencement of any internal improvement of consequence are not in our possession. The money which has been appropriated, and which is to be disbursed under the direction of Congress, in making the roads leading to the State, would go far to improve the navigation of our water courses; in a few years, it is believed, that funds will accumulate to an amount sufficient to defray the expenses of cutting a canal to connect the waters of Lake Michigan and the Illinois River. The advantages resulting from such a work are too obvious to require comment. By means thereof together with the canal connecting the waters of Lake Erie and Hudson River, which is already in a state of great forwardness; a water communication from our very doors will be opened to the Atlantic by way of the lakes. I therefore recommend an early application to the Congress of the United States, to procure such a change in the disposition of that land as to make it applicable to the furtherance of so desirable a purpose."

**Proceedings of the First General Assembly, second session, 1819:** In his message to the First General Assembly, second session, Governor Bond again urged the General Assembly to take action relating to the canal. The House Journal for this session records that on March 12, 1819:

"Mr. Wilcox presented a resolution for the appointment of commissioners to view and ascertain the practicability of opening the navigation between Lake Michigan and the waters of the Illinois river; on motion, ordered that said resolution lie on the table for the further consideration of the House."

The record does not show that any further action was taken by the House on the above resolution. It may have been the basis of the report by Graham and Philips.

**Proceedings of the Sixteenth Congress, first session, 1819-1820:** On December 15, 1819, in the Sixteenth Congress, first session, on motion by Representative Cook of Illinois, the House

instructed the Secretary of War to lay before the House the topographical reports previously made on the proposed Illinois and Michigan Canal. These reports were submitted to the House on December 28, 1819, and were those of Major Long and of Graham and Philips, as described in Chapter 3 of this history. The reports were referred to the Committee on Roads and Canals.

**Proceedings of the Second General Assembly, 1820-1821:**  
In the Second General Assembly, on January 1, 1821, the Senate passed a bill (Senate Bill No. 5) authorizing the State to make necessary surveys and estimates for a canal:

*"An Act respecting navigable Communications between the waters of the Illinois River and Lake Michigan*

*Be it enacted by the people of the State of Illinois represented in the General Assembly:* That there shall be appointed by the Governor three commissioners whose duty it shall be to examine the Illinois River from its junction with the Mississippi to its main sources, and from thence over the portages to Lake Michigan, and fully to ascertain the several obstructions in said Illinois River to the said lake, and after they shall have done so, to determine the most eligible route for opening a canal to connect the waters of the said lake to the navigable waters of the said Illinois River;—and it shall be the duty of the said commissioners to cause the probable courses and ranges of a canal to be explored and examined for the purpose of fixing and determining the most eligible and proper route for the same, and to cause all necessary surveys and levels to be taken, and accurate maps, field-books and drafts thereof to be made, as well of the said canal as of such parts of the river as they may deem necessary to be cleared and improved; and also to recommend proper plans for the construction and formations of the said canal, and of all locks, dams, embankments, tunnels and culverts which may be necessary for the completion of the same.

*Be it further enacted:* That each of the said commissioners, before they enter on the duties required by this act, shall take and subscribe, before some judge or justice of the peace in this state, an oath or affirmation that they will faithfully and impartially discharge the duties required of them by this act according to the best of their skill and abilities.

*Be it further enacted:* That it shall be the duty of the said Commissioners to make or cause to be made, with as much accuracy and minuteness as may be, calculations and estimates of the sum or sums of money which may or will be necessary for completing the said canal and other improvements according to the plan which may be recommended by them for the construction and formation of the same, and to cause the said calculations and estimates, and all surveys, maps, field-books, plans, drafts and models authorized and directed by this act, or so many thereof as may be completed, together with a plain and comprehensive report of their proceedings under and by virtue of this act, to be presented to the General Assembly, at the commencement of their session to be held next after the first Monday in December 1822.

*And be it further enacted:* That the Governor shall have power to direct the auditor to issue his warrant on the treasury of this state for such sum or sums of money, not exceeding five hundred dollars, to defray such necessary expenses and outfits for the said commissioners as may be incurred in making the examinations and reports aforesaid; an account of which shall be



kept and reported by the said commissioners to the General Assembly; which said money shall be paid out of the treasury out of any money not otherwise appropriated,—provided however that no commissioner shall receive any compensation for his services aforesaid until allowed by the General Assembly."

The House referred Senate Bill No. 5 to the Committee on Internal Improvements. This Committee reported on the bill as follows:

"The committee to whom was referred the bill from the Senate entitled 'An act respecting navigable communications between Lake Michigan and the Illinois River' beg leave to report:

That they have had the same under consideration and after giving it all the attention the importance of the subject seems to them to require, are of opinion, that it is inexpedient for this State to take any efficient means at the present session towards effecting the object proposed in and by said bill. Your committee are led to this conclusion as well from a fear that the sum proposed to be appropriated by said bill is much too small to effect the same object contemplated in the referred bill.

embarrassed state of the times to involve the State in an expense which the people could illy bear, as also from a conviction that the General Government has an eye toward the prosecution of the same object contemplated in the referred bill.

Your committee are informed and believe that provision has been made by the War Department of the United States and orders exist for the examination of the country between said waters with an ultimate view of establishing a navigable communication between them. They are therefore led to believe that the General Government might be readily induced upon proper representation of the General Assembly of this State to appropriate the funds which may arise and have accumulated from the two per cent reserved on the sale of public lands for making roads leading to this State to the carrying into effect the object of said bill. It seems also to your committee somewhat uncertain, in consequence of the division line between this State and the State of Indiana never having been extended to the northern boundary of this State, whether Chicago which must necessarily constitute the outlet of said communication on Lake Michigan really lies within the limits of this State. From all which considerations your committee respectfully beg leave to report to this House the following resolutions:

1. *Resolved:* That it is inexpedient at the present to concur with the Senate in an act entitled 'An Act respecting navigable communications between the Illinois River and Lake Michigan'.

2. *Resolved:* That our Senators and Representatives in Congress be requested to use their best endeavors to procure the passage of a law for the construction of a canal connecting the waters of Lake Michigan with the Illinois river and all monies which may or have accrued to this State upon the two per cent reserved on the sale of all public lands sold within this State for making roads leading to the State be appropriated in aiding the carrying into effect said law.

3. *Resolved:* That a committee be appointed by this House to draft a bill for the appointment of commissioners to act in concert with such commissioners as may be appointed by the Legislature of the State of Indiana in running the dividing line between the said State of Indiana and this State until it strikes Lake Michigan on the northern limits of either of said States."

The feeling of this House Committee that the United States

might undertake the survey of a canal may have resulted from sentiment in Congress, for on January 15, 1821, the Senate, Sixteenth Congress, second session, enacted the following resolution:

*"Resolved: That the Committee on Roads and Canals be instructed to inquire into the expediency of authorizing by law, the employment of the Topographical Engineers, under the direction of the President of the United States, in surveying roads and canals through the public lands, in such places and upon such plan as will best promote the general interest, and improve the military defense of the United States."*

The records do not show that any further action was taken on this Resolution during the Congressional session. Such a law was, however, enacted in 1824.

In the General Assembly, the House, upon consideration of the committee report, rejected Senate Bill No. 5 and, on January 22, 1821, adopted the following Resolution:

*"Resolved: That our Senators and Representative in Congress be requested to use their best endeavors to procure the passage of a law authorizing this State to construct a canal connecting the waters of Lake Michigan with the Illinois River, and in order to facilitate the above object, that the two per cent reserved on the sale of all public lands sold in this State, for making roads leading to the State; and also a donation of a quantity of land of one section in width, from the mouth of the Chicago to where said canal shall strike the Illinois river be granted to the State."*

The above Resolution was referred to the Senate and, after amendment, was returned to the House. The House approved the Senate amendment on January 25, 1821, and the Resolution in final form reads as follows:

*"Resolved: That our Senators and Representative in Congress be requested to use their best endeavors to procure the passage of a law enabling this State to construct a canal connecting the waters of Lake Michigan, with the Illinois River, and also a donation of a quantity of land, of one Township in width from the mouth of the Chicago to where the said Canal shall strike the Illinois River, be granted to the State for that purpose."*

**Proceedings in the Seventeenth Congress, first session, 1821-1822:** On December 19, 1821, Senator Thomas of Illinois presented the above Resolution to the Senate, it being referred to the Committee on Roads and Canals. On January 24, 1822, Senator Thomas introduced Senate Bill No. 26 as follows:

#### A BILL

*"To authorize the State of Illinois to open a canal through the public lands to connect the Illinois river and Lake Michigan.*

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the State of Illinois be, and is hereby, authorized to survey and mark, through the public lands of the United States the route of a canal connecting the Illinois river with the southern bend of Lake Michigan; and all the necessary land upon which said canal, embankments and appurtenances, may be constructed,*

shall be forever reserved from any sale to be made by the United States, except in the cases hereinafter provided for; and the use thereof, forever, shall be, and the same is hereby, vested in the said state for a canal, and for no other purpose whatsoever: On condition, however, that, if the said state does not survey, and direct, by law, said canal to be opened, and return a complete map thereof to the Treasury Department within 3 years, from and after the passing of this act; or, if the said canal be not completed, suitable for navigation, within 12 years thereafter, or, if said ground shall ever cease to be occupied by, and used for, a canal, suitable for navigation, the reservation and grant, hereby made, shall be void and of none effect.

Sec. 2. *And be it further enacted*, That every section of land, through which said canal route may pass, shall be, and the same is hereby, reserved from future sale until hereafter specially directed by law; and the said state is hereby authorized and permitted, without waste, to use any materials on the public lands adjacent to said canal that may be necessary for its construction."

Senate Bill No. 26 was referred to the Committee on Public Lands, and this Committee, on February 11, 1822, reported the same with amendments. Section One of the bill was amended to read:

"The route of a canal connecting the Illinois River with the southern bend of Lake Michigan, and ninety feet of land on each side of said canal shall be forever reserved from any sale to be made by the United States,—"

Other provisions were added which, in effect, provided that the United States assumed no financial obligation as to the canal, and further provided that the canal remain a free public highway for the use of the United States. Senate Bill No. 26 passed the Senate on March 20, 1822.

In the House of Representatives, on December 7, 1821, Mr. Cook of Illinois submitted the following Resolution:

"*Resolved*: That the Committee on the Public Lands be instructed to inquire whether any, and if any, what provision is necessary to be made to enable the people of the State of Illinois to open a canal through the public lands, to connect the waters of Lake Michigan with the Illinois River."

"Mr. Floyd opposed saying that Congress had been sufficiently liberal to new States."

"Mr. Cook replied that the object of the resolution was not to solicit a donation from the General Government to assist in making the canal, but merely to reserve a narrow strip of land in the direction of the contemplated canal, and through which it would pass. By this measure the Government, instead of impairing its funds, would increase them. Such an act would undoubtedly enable the Government to dispose of the reservation hereafter at a price greatly enhanced, and at the same time virtually authorize the Government of Illinois to go on with its contemplated undertaking."

The House adopted Mr. Cook's Resolution and referred it to the Committee on Public Lands. On January 14, 1822, this Committee reported House Bill No. 34, which was generally similar to Senate Bill No. 26. The House Bill was committed to a Committee of the Whole House. On March 20, 1822, Senate

Bill No. 26 reached the House, whereupon the House refused further consideration of its own bill and, on March 25, 1822, passed the Senate Bill, which, by approval of the President on March 30, 1822, became a law. As enacted, the law reads:

*"An Act to authorize the State of Illinois to open a canal through the public lands to connect the Illinois river with Lake Michigan.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the State of Illinois be, and is hereby authorized to survey and mark, through the public lands of the United States, the route of the canal connecting the Illinois river with the southern bend of Lake Michigan; and ninety feet of land on each side of said canal shall be forever reserved from any sale to be made by the United States, except in the cases hereinafter provided for, and the use thereof forever shall be, and the same is hereby vested in the said state for a canal, and for no other purpose whatever; on condition, however, that if the said state does not survey and direct by law said canal to be opened, and return a complete map thereof to the Treasury Department within three years from and after the passing of this act; or if the said canal be not completed, suitable for navigation, within twelve years thereafter; or if said ground shall ever cease to be occupied by, and used for, a canal, suitable for navigation; the reservation and grant hereby made shall be void and of none effect: *Provided, always, and it is hereby enacted and declared, that nothing in this act contained, or that shall be done in pursuance thereof, shall be deemed or construed to imply any obligation on the part of the United States to appropriate any money to defray the expenses of surveying or opening said canal; Provided also, and it is hereby further enacted and declared, that the said canal, when completed, shall be and forever remain, a public highway for the use of the Government of the United States, free from any toll or other charge whatever, for any property of the United States, or persons in their service passing through the same.**

*Sec. 2. And be it further enacted, That every section of land through which said canal route may pass, shall be, and the same is hereby, reserved from future sale, until hereafter specially directed by law; and said State is hereby authorized and permitted, without waste, to use any materials on the public lands adjacent to said canal, that may be necessary for its construction."*

**The Southern Bend of Lake Michigan:** Documentary sources, prior to the Act of March 30, 1822, in considering the proposed canal describe it as a canal to connect the waters of the Illinois River or of the Mississippi River with those of Lake Michigan. The law, however, states that it is to connect the Illinois River with the "southern bend" of Lake Michigan. The meaning of this term, therein used for the first time insofar as known, was considered in subsequent litigation. The records have therefore been carefully examined for any data that might show why or in what sense the term was used.

The term "southern bend or extreme" of Lake Michigan was used in the Ordinance of 1787 to indicate a definite point in latitude. In the Indian Treaty of 1816 the term "southern extremity" was used in a similar sense. In the available records, however, relating to consideration and passage of the law

of March 30, 1822, there are no data showing why the term was included. The bill was introduced by Illinois sponsors, and the route by the Chicago River had always been understood to be the route of choice. The Resolution enacted by the Illinois General Assembly on January 25, 1821, and presented to the Senate of the United States by Senator Thomas, specifically mentioned the mouth of the Chicago river as a starting point for the canal route.

The terms "southern bend," "southern extreme," or "southern extremity" have been used by others to describe a geographical area rather than a point of latitude. For example, Major Long in the narrative of his "Expedition to the Source of St. Peter's River" states:

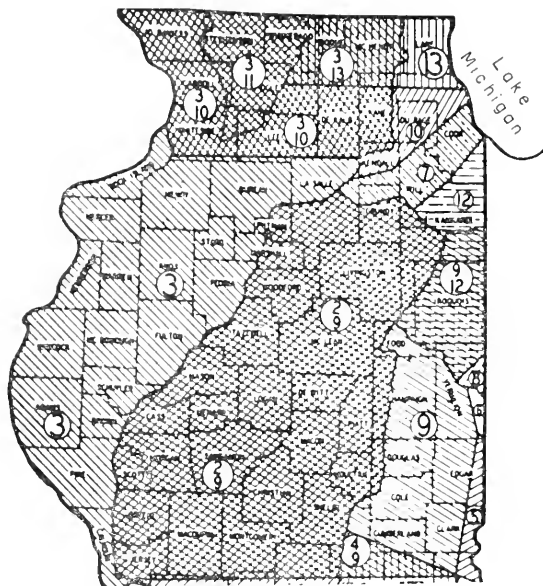
"The country embracing the southern extremity of Lake Michigan, and extending inland many miles from the lake, presents no hills, except the elevated sand-drifts that bound that extremity of the lake. On the contrary, an extensive flat embracing woodlands and meadows alternating with each other, spreads from the St. Joseph to the Des Plaines, and from the lake to the Kankakee. Its soil is apparently good, but the chilly, northerly winds, which blow from the lake, charged with vapor, seem to carry with them blast and mildew, and render its prolific energies abortive. At Chicago which is situated within the tract, attempts have been made to cultivate maize, wheat, oats and other products but they have often proved fruitless."

The Committee on Internal Improvements of the House of Representatives, Twenty-second Congress, first session, in Rep. No. 446 (appendix 27) on the Illinois and Michigan Canal uses the term "southern extreme" to mean a general geographical location, as did Major Long and Secretary Gallatin.

It might again be noted that the law of March 30, 1822, states:

"Authorized to survey and mark through the public lands of the United States, the route of the canal connecting the Illinois river with the southern bend of Lake Michigan."

If it were the intent of Congress that the term "southern bend," as used in the act of March 30, 1822, meant the most southerly point in latitude of the lake, as has been argued by some, then the canal could not pass, at its upper end, through the public lands of the United States. It was not until 1832 that the Indians Lands south and east of the cession of 1816, and embracing the lands along the southern end of the lake, were acquired by treaty with the Potawatomi (exhibit 1).



#### LEGEND.

1. June 7, 1803. Definition of Vincennes Tract.
2. August 13, 1803. Treaty with Kaskaskia tribe (confirmed by Treaty of September 25, 1818).
3. November 3, 1804 (September 13, 1815, September 14, 1815, May 13, 1816, and August 19, 1825). Treaty with Sauk and Fox Indians.
4. December 30, 1805. Treaty with Piankashaw tribe.
5. September 30, 1809. Treaty with Delaware, Potawatomi and Miami (and December 9, 1809 with Kickapoo Indians).
6. June 4, 1816. Treaty with Wea and Kickapoo Indians.
7. August 24, 1816. Treaty with Potawatomi, Ottawa, and Chippewa Indians.
8. October 2, 1818. Treaty with Potawatomi Indians.
9. July 30, 1819. Treaty with Kickapoo Indians.
10. July 29, 1829. Treaty with Potawatomi, Ottawa, and Chippewa Indians.
11. September 15, 1832. Treaty with Winnebago Indians.
12. October 20, 1832. Treaty with Potawatomi Indians.
13. September 26, 1833. Treaty with Potawatomi, Ottawa and Chippewa Indians.

#### NOTE

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STATE OF ILLINOIS  
DEPARTMENT OF PUBLIC WORKS AND BUILDINGS  
DIVISION OF WATERWAYS

## INDIAN CESSIONS OF ILLINOIS LANDS

To Accompany Documentary History  
Of

THE ILLINOIS AND MICHIGAN CANAL  
Exhibit I

## CHAPTER 5

### PROCEEDINGS BY THE STATE RELATIVE TO THE FEDERAL ACT OF MARCH 30, 1822

**Proceedings of the Third General Assembly, 1822-1823:** The Third General Assembly met at Vandalia on December 2, 1822. Both the retiring Governor, Shadrach Bond, and the incoming Governor, Edward Coles, in their messages to the General Assembly (appendices 4 and 5), urged that definite action be taken relative to the Federal Act of March 30, 1822. Governor Coles referred to this Act as follows:

"It has been seen, however, with regret that in the Act passed on this subject during the last session of Congress, little or nothing was granted, and much required from the State. The Act referred to, only gave permission to the State to cut a canal through the public lands connecting the Illinois River with Lake Michigan, and granted to it the breadth of the Canal with ninety feet on each side of it."

Governor Coles recommended that the General Assembly make provision to survey the canal route, establish a location, and make estimates of cost. He also recommended that, when this was done, the surveys and estimates be transmitted to the General Government, together with a memorial soliciting a grant of land to aid in constructing the canal.

That part of Governor Coles' message relating to the proposed canal was referred to the Committees on Internal Improvement of the House and Senate. The deliberations of the General Assembly culminated, on February 14, 1823, in the passage of legislation providing for a survey of the canal route. Under this legislation (appendix 6), the Commissioners proceeded to survey the general route and make estimates of cost.

**Proceedings of the Canal Commissioners, 1823-1824:** The Act of February 14, 1823 named Emanuel West, Erastus Brown, Theophilus Smith, Thomas Sloo, and Samuel Alexander as a Board of Commissioners to survey and locate the most desirable canal route and to make estimates of cost. The Board met at Vandalia to organize and to select an engineer. It was hoped to secure an experienced engineer from the Erie Canal and efforts were made to do so. On August 15, 1823, Samuel Lockwood, who had been empowered by the Board to personally contact engineers in New York State, advised by letter that the services of an engineer experienced on canals could not be secured. The Board then engaged Justus Post as engineer.

In the fall of 1823, the Commissioners and the engineer made a general reconnaissance of the canal route. As a result

of this inspection, it was decided to make the actual survey in the late summer and fall of 1824, at which time the area would be relatively dry, and impeding vegetation could be destroyed by fire.

The actual field survey was made in the autumn of 1824. To expedite the work, the Commissioners employed a second engineer, Rene Paul, and divided the survey group into two parties. One party started at Lake Michigan and worked south and west. The second party started at Illinois Rapids and worked north and east until the two met.

**The Report of Engineers Post and Paul, 1824:** Upon completion of the field investigations in the fall of 1824, engineers Post and Paul prepared a report of the survey together with estimates of cost. Five routes, or, more correctly, variations in route, were outlined, the estimated cost ranging from \$639,500 to \$716,000. The engineers did not specifically recommend any particular route, and were quite frank in stating that their examination of subsurface conditions to be encountered in excavation were superficial. The engineers' report was submitted to the Canal Commissioners on December 25, 1824.

**Report of the Board of Canal Commissioners, 1825:** On January 3, 1825, the Canal Commissioners prepared a report of their work, and this, together with the engineering report of Post and Paul, was transmitted to the General Assembly. The Canal Commissioners discussed the alternate routes and their comparative cost but did not recommend a specific route.

**Proceedings of the Fourth General Assembly, first session, 1824-1825:** On January 4, 1825, the report of the Canal Commissioners, together with the engineers' report, was laid before the House and referred to the Committee on Internal Improvements. On January 4, 1825, this Committee reported a bill entitled "An Act to Incorporate the Illinois and Michigan Canal Co." This bill provided for the financing and construction of the canal by a chartered stock company. The bill was rapidly enacted into law, being approved by the Council on Revision on January 17, 1825.

**Proceedings of the Illinois and Michigan Canal Company, 1825:** After enactment of the Act of January 17, 1825, incorporating the Illinois and Michigan Canal Company, the incorporators caused a pamphlet (appendix 7) to be printed. This pamphlet contains the report of the Canal Commissioners, the engineering report of Post and Paul, the text of the law enacted January 17, 1825, and a reduced scale version of the Post and Paul map.

The above described pamphlet was printed and distributed in an effort to interest capital in the canal project. There is no copy in the canal records or among the Illinois Documents.



It is of interest that, as late as 1900, the Canal Commissioners could not establish the existence of this pamphlet, desired in connection with then pending litigation. It was not until 1925 that a photostatic copy was secured from the Library of Congress. It is not a particularly rare document, however. Printed copies are known to be available in the Library of Congress, the Illinois Historical Library, the John Crerar Library, and the Chicago Historical Society Library, and presumably could be found in others.

**The Post and Paul Map of the Canal Route:** As a part of their report, engineers Post and Paul prepared two maps of the canal survey. These maps are entitled "Map of that part of the State of Illinois through which it is contemplated to construct a Canal," by J. Post and R. Paul, 1824. Scale  $2\frac{1}{2}$  miles to the inch. One of these maps was preserved by the State as a part of the canal records and is now in the State Archives. The second map, which is a duplicate of the first excepting that it carries a sketch of the proposed moles at the mouth of Chicago River, was transmitted to President Monroe.

**Filing the Map of the Canal Route:** The Federal Act of March 30, 1822 required that a complete map of the canal route be filed with the Treasury Department within three years from the date of the Act. On January 12, 1825, the General Assembly enacted the following Resolution:

*"Resolved: That the Executive be, and he is hereby authorized and required to forward to the President of the United States a copy of the Canal Commissioners' Report with maps thereto annexed, and also to forward to our members in Congress a copy of said report."*

On January 20, 1825, Governor Coles transmitted a copy of the pamphlet prepared by the Canal Company and the second copy of the Post and Paul map to the President of the United States. Copies of the pamphlet were sent to the Illinois Members of Congress. The following letters of transmittal are from the Governor's Letter Book 1818-1831:

"State of Illinois  
Executive Department  
January 20, 1825

Dear Sir:

In compliance with the request of the Legislature of this State I have the honor to transmit you a copy of the "Report of the Canal Commissioners of the State of Illinois" together with a map of the country between the headwaters of the Illinois river and Lake Michigan, on which is delineated the proposed canal to connect their navigable waters—and to renew the assurance of my great respect and sincere regard.

Edward Coles

James Monroe  
President of the U. S.  
Washington"

"State of Illinois  
Executive Department  
January 20, 1825

Sir:

In compliance with the request of the Legislature, I transmit you a copy of the "Report of the Canal Commissioners of the State of Illinois." It may be well for me to add that I have forwarded by this day's mail to the President of the United States a copy of the report together with a map of the country through which it is proposed to cut the canal, and on which the canal is delineated,—a loan of which I presume you can obtain from the President if desired. I would cheerfully have forwarded to you a map also, but have been unable to procure a copy.

I am very respectfully,  
Edward Coles

D. P. Cook Esq.  
Member of Congress  
from Illinois  
Washington"

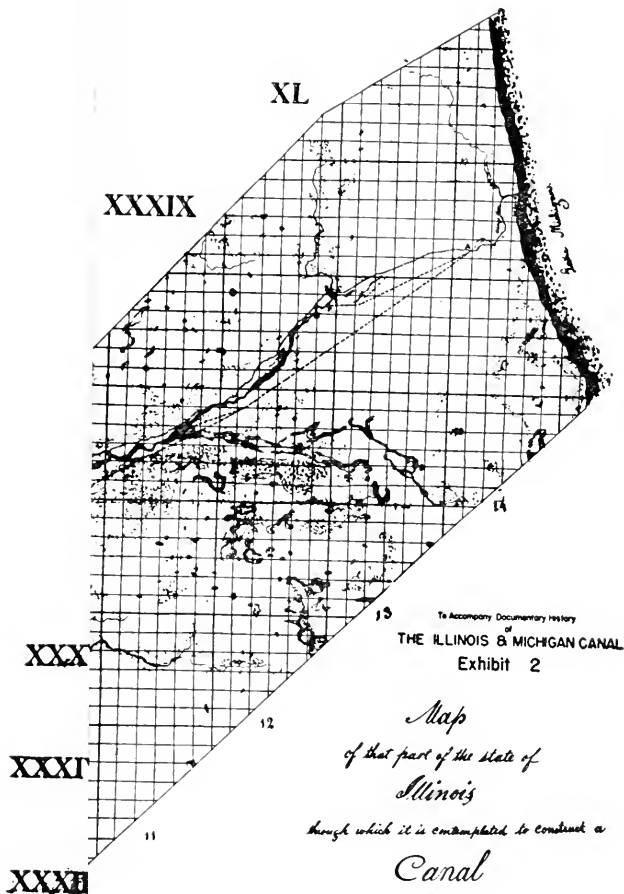
(A similar letter was this date written and transmitted to Messrs. Thomas and McLean, Senators in Congress)

There is no record as to why the General Assembly directed the Governor to send the map of the canal route directly to the Chief Executive rather than to the subordinate Treasury Department. It is possible that the action resulted from an Act of Congress approved May 24, 1824, making canal surveys a direct responsibility of the President:

*"Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the President of the United States is hereby authorized to cause the necessary surveys, plans, and estimates, to be made of the routes of such roads and canals as he may deem of national importance, in a commercial or military point of view, or necessary for the transportation of the public mail; designating, in the case of each canal, what parts may be made capable of sloop navigation; the surveys, plans, and estimates, for each, when completed to be laid before Congress.*

*Sec. 2. And be it further enacted, That, to carry into effect the objects of this act, the President be, and he is hereby authorized to employ two or more skillful civil engineers and such officers of the Corps of Engineers, or who may be detailed to do duty with that corps, as he may think proper; and the sum of thirty thousand dollars be, and the same hereby appropriated, to be paid out of any moneys in the treasury, not otherwise appropriated."*

It may be noted that the Post and Paul map, as sent to Washington, January 20, 1825, carries the notation "Transmitted to Secretary of War by Governor Edward Coles with his letter of January 20, 1825." This notation is erroneous, as the letter was addressed to President Monroe. The original map and Governor Coles' letter of transmittal are now preserved in the National Archives. A certified copy of this map is in the State Archives. A reduced scale reproduction of the certified copy is shown as exhibit 2 of this report. For clarity in reproduction, the copy was retouched as the original is quite faint and badly worn.



To accompany Documentary History  
of  
THE ILLINOIS & MICHIGAN CANAL  
Exhibit 2

*Map  
of that part of the State of  
Illinois  
through which it is contemplated to construct a  
Canal*

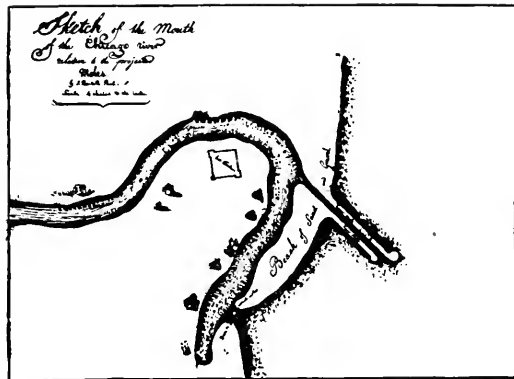
by J. B. & R. S. Paul, 1838.

Scale 40 miles to the inch.

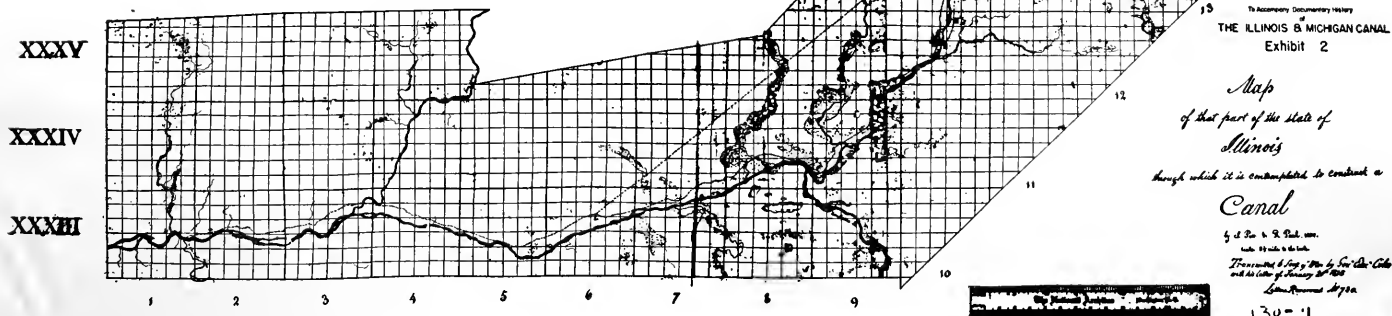
Transmitted to Congress by Sen. Cass' Order  
with his letter of January 27, 1838

Letter Received May 20

134-1



Drawer 130  
Sheet 7.



**Proceedings of the Fourth General Assembly, second session, 1826:** On January 2, 1826, Governor Coles, in his message to the General Assembly, discussed the canal as follows:

"The Directors of the Illinois and Michigan Canal Company have had several meetings, but have as yet done nothing which precludes the Legislature from altering or abolishing their charter. They have caused to be printed and distributed, a number of pamphlets containing the reports of the Canal Commissioners and Engineers, and the law incorporating the company, together with a map delineating the route of the proposed canal, for the purpose of affording the necessary information to persons disposed to become members of the company. From all the information which has been received, it is questionable whether the stock could be disposed of, unless Congress would make a donation of land; but with a reasonable grant there is no doubt the stock would be promptly taken, and the canal made by the capitalists of the Atlantic States. During my late tour to the eastward, I took great pains to ascertain the opinion and disposition of capitalists; and not only satisfied myself of the correctness of foregoing statement, but also was confirmed in my belief, that if the State would make a judicious disposition of its means, it would find no difficulty in borrowing the requisite sum to cut the canal. It will be recollected that I have on two former occasions, expressed to the Legislature the opinion, that the canal ought to be made by the State, and pointed out the means she possessed of paying the interest on the sum necessary to do it. But as the General Assembly entertained a different opinion, I consoled myself with the impression that it was better to have the canal promptly cut by a company, than to have its execution delayed to a very distant period. It is my duty, however, on this occasion, respectfully to submit to the General Assembly, whether the charter granted at the last session does not require revision, with a view of rendering its terms and conditions more plain and intelligible, and more advantageous to the State."

In January 1826, the Illinois and Michigan Canal Company made the following report to the General Assembly:

"In compliance with the provision of the charter which requires the company to make to every session of the General Assembly, a report of the expense incurred, the undersigned president and directors of the Illinois and Michigan Canal Company, report that they have expended the sum of \$98, in printing and distributing a number of the pamphlets containing the reports of the canal commissioners and engineers, and the law incorporating the company; together with a map delineating the route of the proposed canal. The undersigned think proper to add an explanation of their conduct, and for the information and consideration of the General Assembly, that immediately on the passage of the law incorporating the company, the directors organized their board and caused to be printed the pamphlets above referred to, and distributed them extensively, accompanied in many cases, by letters from the directors, to persons, who it was thought, might be induced to subscribe to the company, or in any manner be inclined to promote the great object for which it has been incorporated. It was not deemed expedient to go to the expense and trouble of opening books for subscription to the company until the necessary information contained in the pamphlets, should be furnished and the opinion and disposition of capitalists ascertained. From the information which has been received it is not believed that the stock could have been disposed of during the last year; nor is it believed that it can be disposed

of for several years to come, unless Congress will make a donation of land; but with a reasonable grant, the directors are of opinion the stock will be subscribed and the canal promptly executed, by the capitalists of the Atlantic States. Presuming that the object the General Assembly had in view in incorporating a company, was to have the work immediately undertaken, and not believing that this can be done without a donation of land, which it is thought Congress would be more willing to make to the State than to the Company; and believing also, that the charter is defective in many respects, the undersigned president and directors having no interest other than that common to the community, nor motive for accepting or continuing in their agency than a desire to render a public service, are unwilling to be a barrier to the representatives of the people, after having had an opportunity of conferring with their constituents and giving the subject all the consideration which its importance requires, from pursuing such course as they may deem best; and therefore, the president and directors respectfully return their charter to the hands from whence they received it, in order that the act may be revised. And they hereby give their assent to such alterations, or even abrogation of the charter, as the General Assembly in its wisdom may deem best calculated to promote the interests of the State."

After consideration of the Governor's Message and the Report of the Illinois and Michigan Canal Company, the General Assembly, on January 20, 1826 (appendix 8), proceeded to repeal the charter of the Company. From January 20, 1826 until January 22, 1829, there was no provision in law for proceeding with canal planning or construction.

## CHAPTER 6

### LEGISLATIVE HISTORY OF THE FEDERAL ACT OF MARCH 2, 1827

**Proceedings of the Third General Assembly, 1822-1823:** In his inaugural message of December 5, 1822 (appendix 5) to the General Assembly, Governor Coles expressed regret that the Federal Act of March 30, 1822 was not more liberal toward the State. He urged that the General Assembly make every effort to get the canal started, and to seek a liberal donation of land, or other effective assistance from Congress in aid of construction.

**Proceedings of the Fourth General Assembly, first session, 1824-1825:** On November 27, 1824, the General Assembly enacted a Memorial to Congress soliciting a grant of land for the canal. The text of this Memorial has not been located, but it apparently requested a grant of lands of one section in depth on each side of the proposed canal.

**Proceedings of the Eighteenth Congress, second session, 1824-1825:** On January 3, 1825, Mr. Cook of Illinois presented the Memorial enacted by the General Assembly on November 27, 1824 to the House of Representatives. The Memorial was referred to a Select Committee.

On February 1, 1825, this Select Committee made favorable report (appendix 9) and introduced a bill, H.R. 309, providing for a land grant. This bill read as follows:

#### A BILL

*"To grant a certain quantity of land to the State of Illinois, for the purpose of aiding in opening a canal to connect the waters of the Illinois River with those of Lake Michigan.*

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be, and are hereby granted to the State of Illinois, for the purpose of aiding the said state in opening a canal to unite the waters of the Illinois river with those of Lake Michigan, the four nearest sections of land to the said canal, embracing the land on both sides thereof, from one end of the said canal to the other; and the said land shall be subject to the disposal of the Legislature of said state, for the purpose aforesaid and no other.*

*Sec. 2. And be it further enacted, That, so soon as the route of the said canal shall be located and agreed on by the said state, it shall be the duty of the Governor thereof, or such other person or persons as may have been, or shall hereafter be, authorized to superintend the construction of said canal, to examine and ascertain the particular sections to which the said state will be entitled under the provisions of this act, and re-*

port the same to the Secretary of the Treasury of the United States.

Sec. 3. *And be it further enacted*, That the said State, under the authority of the Legislature thereof, after the selection shall have been so made, shall have power to sell and convey the whole, or any part of the said land, and to give a title, in fee simple, therefor, to whomsoever shall purchase the whole or any part thereof."

On February 17, 1825, the House resolved itself into a Committee of the Whole House on H.R. 309. After some debate, the Speaker resumed the chair, the bill was reported with amendments, and the amendments were concurred in by the House. It was then ordered that the bill be tabled. Subsequent efforts to reconsider were defeated and the bill lost.

**Proceedings of the Fourth General Assembly, second session, 1826:** On January 2, 1826, Governor Coles reported to the General Assembly that it was very doubtful if stocks, such as that proposed to be issued by the Illinois and Michigan Canal Company, could be sold unless Congress would make a liberal donation of lands. On January 18, 1826, the General Assembly again memorialized Congress (appendix 10) for a land grant in aid of the canal. In this Memorial, the State requested the grant of the respective townships of land through which the contemplated canal might pass.

**Proceedings of the Nineteenth Congress, first session, 1825-1826:** The Illinois Memorial of January 18, 1826 was presented to Congress. In the House, it was referred to the Committee on Roads and Canals. On March 30, 1826, this Committee made favorable report (appendix 11) and introduced H.R. 190. This bill was taken up several times, committed and recommitted to committee. On May 4, 1826, the following amendatory bill was reported:

The Committee on Roads and Canals, to which was recommended, "*the Bill to aid the State of Illinois in opening a Canal to connect the Michigan Lake with the Illinois River*, reported the following:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That there be, and is hereby, granted to the State of Illinois, for the purpose of aiding the said State, in opening a Canal, to unite the waters of Lake Michigan, and the Illinois River, the one equal moiety of the eight nearest sections of land, to the route of the said canal, extending from one end of the said Canal to the other, including the several sections through which the same shall pass, as a part of the said eight sections; and the other moiety of the said eight sections, which shall consist of every alternate section, shall be reserved from sale by the United States, until otherwise directed by law; and the land hereby granted to the said State shall be subject to the disposal of the Legislature of said State, hereafter to be made, for the only use and benefit of the said State, for the purpose aforesaid, and for no other.

Sec. 2. *And be it further enacted*, That so soon as the route of the said Canal shall be located, and agreed on, by the said



State, it shall be the duty of such person or persons, as may be hereafter authorized by the Legislature of said State, to superintend the construction of said Canal, or such other person or persons, as the said Legislature may authorize to perform that duty, in conjunction with such person or persons, as may, for that purpose, be appointed by the President of the United States, to ascertain the particular sections to which the said State will be entitled, under the provisions of this act and report the same to the Secretary of the Treasury of the United States.

Sec. 3. *And be it further enacted*, That the said State, under the authority of the Legislature thereof, after the selection shall have been made, as aforesaid, shall have power to sell and convey the whole, or any part of the said land, and to give a title in fee simple therefor, to whomsoever shall purchase the whole or any part thereof: *Provided, however*, That no title granted to the State, to any portion of the said land, shall be valid against the United States, until the said Canal shall have been completed; and the same, when completed, shall not be less than the following dimensions, to wit: forty feet wide at the surface of the water, *And* twenty-eight feet wide at the bottom, and four feet deep: *And, provided also*, That if the said land shall sell for a greater sum than will be required to defray the expense of making said Canal, the surplus shall be paid into the Treasury of the United States, by the said State: *And, provided, however*, That the said Canal shall be completed within the term of ten years, from and after the passing of this act.

Sec. 4. *And be it further enacted*, That, if the said State shall hereafter wish to incorporate a company to open said Canal, and to vest the money arising from the sale of the lands hereby granted, in stock in such company, for the sole use of the State, nothing in this act shall be so construed, as to prevent it from doing so: *Provided*, That the said Canal shall always remain free for the transportation of munitions of war, and all other property belonging to the United States, without any toll, duty, or other imposition, whatsoever."

The above version of H.R. 190 was read and recommitted to the Committee on Roads and Canals. A further amended bill was reported, but efforts to bring the bill to passage failed.

In the Senate a similar bill for a grant of lands was introduced but failed of passage.

**Proceedings of the Fifth General Assembly, 1826-1827:** In his inaugural address to the Fifth General Assembly, December 7, 1826, Governor Edwards urged a further petition to Congress for a grant of lands. The Governor said:

"In 1816 a tract of land binding on Lake Michigan, including Chicago, and extending to the Illinois River, was obtained from the Indians, for the purpose of opening a canal communication between the Lake and the river. Having been one of the commissioners who treated for this land, I personally know that, the Indians were induced to believe that the opening of the canal would be very advantageous to them, and that, under authorized expectations that this would be done, they ceded the land for a trifle. Good faith, therefore, toward these Indians, as well as the concurring interest of this State, and of the Union, seem to require that the execution of this truly national object should not be unnecessarily delayed; and nothing is more reasonable than that the expenses of it, should be defrayed out of the proceeds of the very property which was so ceded for the purpose of having it done. I therefore recommend to the Gen-

eral Assembly to petition Congress, for the right to dispose of, under such restrictions, limitations and conditions as may be deemed necessary to prevent any sacrifice of its value, and to insure its faithful application, so much of any part of this tract of land, as will be adequate to the completion of this important internal improvement."

On January 3, 1827, the General Assembly again memorialized Congress (appendix 12) for a grant of land. This Memorial requested the grant of a quantity of land, "equal to two entire townships, along the whole course of the canal, and adjoining, and the same on both sides."

**Proceedings of the Nineteenth Congress, second session, 1826-1827:** On January 9, 1827, in the Senate, the Committee on Public Lands reported a bill, Senate No. 48, to grant lands to the State, and on February 7, 1827, the President of the United States communicated the latest Memorial from Illinois to the Congress. Senate No. 48, as introduced, read as follows:

#### A BILL

*"To grant a quantity of land to the State of Illinois for the purpose of aiding in opening a canal to connect the waters of the Illinois river with those of Lake Michigan.*

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be, and hereby is, granted to the State of Illinois, for the purpose of aiding the said State in opening a canal to unite the waters of the Illinois river with those of Lake Michigan, a quantity of land equal to six sections in width, embracing the land on both sides thereof, from one end of the said canal to the other; and the said land shall be subject to the disposal of the Legislature of the said State, for the purpose aforesaid, and no other; Provided, That the said canal, when completed, shall be, and forever remain, a public highway for the use of the Government of the United States, free from any toll, or other charge, whatever, for any property of the United States, or persons in their service, passing through the same.*

*Sec. 2. And be it further enacted, That, so soon as the route of the said canal shall be located and agreed on by the said State, it shall be the duty of the Governor thereof, or such other person or persons as may have been, or shall hereafter be authorized to superintend the construction of said canal, to examine and ascertain the particular sections to which the said State will be entitled, under the provisions of this act, and report the same to the Secretary of the Treasury of the United States.*

*Sec. 3. And be it further enacted, That the said State, under the authority of the Legislature thereof, after the selection shall have been so made, shall have power to sell and convey the whole, or any part of the said land, and to give a title in fee simple therefor, to whomsoever shall purchase the whole, or any part thereof."*

A consideration of the Illinois Memorials, the reports of Congressional Committees, and the above bills as introduced in Congress relative to the proposed land grant shows that the desire and the intent expressed therein, was to secure and to grant a quantity of land including all the sections through which the canal was to pass. The sentiment of Eastern members of

Congress, however, appears to have been that such a grant of public lands could only be justified by enhancement in value of the adjacent unsold public lands, and that only the lands immediately along the canal would be so enhanced.

In this session of Congress, a bill similar to Senate No. 48 had been introduced providing for a land grant to Indiana for the Wabash and Erie Canal. This bill was taken up on February 9, 1827 and extensively debated. In commenting on the manner of giving land, that is, three sections in width on each side of the canal, Senator Holmes said:

—"By this manner of giving land, all the benefit would accrue to the State of Indiana. Even the increase of the price of lands would be to their advantage solely; for all the land that would be affected, would have been given to them. He should have thought, if any desire had existed to assist the Treasury, by aiding the sale of public lands, at least alternate sections along the line of the canal should have been reserved. There the United States would have gained something"—

Consideration of the Indiana Bill was resumed on February 13, 1827, with the following action taken:

"On motion of Mr. Hendricks, the bill to appropriate a certain quantity of land for the opening of a canal to unite the waters of the Wabash with Lake Erie and the amendment offered by Mr. Holmes on Friday, were taken up."

"Mr. Holmes then withdrew that amendment and offered two others, making the grant of land for the canal to amount to the half of five sections in width on each side of the canal, and each alternate section to be reserved to the United States, to be sold by the Commissioner of the General Land Office, under the direction of the President of the United States, which were put and carried."

"A debate of considerable length took place upon this bill, chiefly upon points of the discussion of Friday, in which Messrs. Smith, of South Carolina, Harrison and Bell, took part."

"Mr. Chandler observed, that, as no time for the completion of the canal had been fixed, he would suggest whether it would not be proper that some such limitation should be fixed."

"Mr. Eaton then moved an amendment to the bill by which the State of Indiana was bound to commence and complete the canal in given periods. This proposition gave rise to much discussion between Messrs. Hendricks, Eaton, Chandler, Ridgely, Holmes and Noble, when the proposition of Mr. Eaton having been modified to make it incumbent on the State of Indiana to commence the canal in five years, and complete it in twenty years, and binding the State to pay the amount of any lands that shall have been sold, should the canal not be completed—and making all titles to land under the State valid. The motion to amend was taken and carried."

"The question then recurring on engrossing the bill for a third reading, and Mr. Chandler having called for the yeas and nays, it was carried by the following vote 28 to 14."

"On motion of Mr. Kane, the bill to appropriate a quantity of land in aid of opening a canal to unite the waters of the river Illinois and Lake Michigan was taken up."

"Mr. Kane moved to amend the bill in the same manner as that for the Wabash canal, which were severally adopted and, after Mr. Cobb had addressed the Senate against the bill, on the ground of its unconstitutionality and inexpediency, it was ordered to be engrossed for a third reading."

The amended bill was sent to the House on February 17, 1827, where it was passed on March 2, 1827, and approved by the President the same day. The bill as enacted into law reads:

*"An Act to grant a quantity of land to the State of Illinois for the purpose of aiding in opening a canal to connect the waters of the Illinois river and those of Lake Michigan.*

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be, and hereby is, granted to the state of Illinois, for the purpose of aiding the said State in opening a canal to unite the waters of the Illinois river with those of Lake Michigan, a quantity of land equal to one-half of five sections in width, on each side of said canal, and reserving each alternate section to the United States, to be selected by the Commissioner of the Land Office, under the direction of the President of the United States, from one end of the said canal to the other; and the said lands shall be subject to the disposal of the Legislature of the said State, for the purpose aforesaid, and no other: Provided, that the said canal, when completed, shall be and forever remain a public highway for the use of the Government of the United States, free from any toll, or other charge whatever, for any property of the United States, or persons in their service, passing through the same: Provided, that said canal shall be commenced within five years, and completed in twenty years, or the State shall be bound to pay to the United States the amount of any lands previously sold, and that the title to purchasers under the State shall be valid.*

*Sec. 2. And be it further enacted, That so soon as the route of the said canal shall be located and agreed on by the said State, it shall be the duty of the Governor thereof, or such other person or persons as may have been, or shall hereafter be, authorized to superintend the construction of said canal, to examine and ascertain the particular sections to which the said State will be entitled, under the provisions of this act, and report the same to the Secretary of the Treasury of the United States.*

*Sec. 3. And be it further enacted, That the said State, under the authority of the legislature thereof, after the selection shall have been so made, shall have power to sell and convey the whole, or any part of the said land, and to give a title in fee simple therefor, to whomsoever shall purchase the whole or any part thereof."*

**Relationship between the Federal Acts of March 30, 1822 and of March 2, 1827:** The legislative histories of the above Acts have been developed in detail because the relationship between them, if any, is involved in subsequent litigation. Some authorities, including the highest courts, have held that by the passage of the Act of March 2, 1827, the Act of March 30, 1822 was superseded or abandoned. Other authorities have held that the later Act was, in effect, an amendment of the earlier Act. Still others have held that both are in effect.

A careful search of the proceedings in Congress, as reflected by the Legislative Journals, the Register of Debates, and other documentary sources, has been made for any data that might bear on this question. The results are meager.

The Committee Report of February 1, 1825 (appendix 9)

mentions that the law of March 30, 1822 was passed by Congress, and that the State had appointed Commissioners to survey the route.

The Committee Report of March 30, 1826 (appendix 11) mentions the law of March 30, 1822, and states that the surveys had been made as required and the location of the canal established.

Other than these two references, the Act of March 30, 1822 is not referred to in any Congressional proceedings known relative to enactment of the law of March 2, 1827.

In 1827, Indiana was seeking a grant of land for the Wabash and Erie Canal, having previously been authorized to survey and mark the route under a law similar to that of March 30, 1822 for the Illinois and Michigan Canal. A Select Committee of the Senate, in a report (appendix 13) dated January 23, 1827 on the proposed grant to Indiana, said:

"An Act of Congress heretofore authorized the State of Indiana to survey and locate this route through the public lands; but, the State being destitute of the means of constructing the Canal, was unwilling to incur the expense of its location. The act on this subject has remained a dead letter and will expire on the 26th of May next. The State is still unable to proceed with the work, without the aid of the General Government."

In enacting the law of March 2, 1827, the State was granted alternate sections of land along the canal line, time limits for construction provided, the free use thereof reserved by the United States, and provision made that if the canal were not built the proceeds from sale of the granted lands be returned to the United States. The route of the canal was considered as yet to be established.

The law of March 2, 1827 is, however, silent upon the question as to rights of way through the public lands in the alternate sections to be reserved by the United States on the canal route as finally selected by the State.



## CHAPTER 7

### PROCEEDINGS BY THE STATE RELATIVE TO THE FEDERAL ACT OF MARCH 2, 1827

**Federal Assistance in Canal Location:** As previously stated, the charter of the Illinois and Michigan Canal Company was repealed on January 20, 1826. Hence when Congress enacted the law of March 2, 1827, there was no agency of the State empowered by law to deal with matters relating to construction of the canal. The Act of March 2, 1827, however, required the State to locate the canal and make selection of the lands to be granted to the State.

While a survey and report on a canal route had been made by the State in 1824-1825, Governor Edwards felt that the route should be examined and selected by engineers of greater experience. On January 28, 1828, he requested the cooperation of the War Department:

"Executive Department, State of Illinois,  
28th January, 1828

Sir: As the Legislature of this State will, doubtless, at its next session, make provision for commencing the canal, to connect the waters of the Illinois river and Lake Michigan, I beg leave, on behalf of the State, to request that a survey of a proper route for it may be made by some competent officer or officers, of the Engineer Department of the United States.

A survey has already been made under the authority of this State, but as the engineers employed were without benefit of that experience which the great importance of the object should command; and as the United States, retaining every alternate section of land through which the canal is to pass, have a direct interest in its judicious execution, in reference to the public domain; the measure solicited seems not less demanded by the interest of the United States, than to this State, and therefore I permit myself to hope it will be adopted.

I will only add, that if this request can not be granted in the course of the present year, it will be too late to do it at a future period, because, after its next session, our Legislature will not again sit for two years, before which time I have no doubt the work will have progressed too far to admit of a change which might previously be ascertained to be advisable.

I have the honor to be etc., etc.,

NINIAN EDWARDS

The Honorable James Barbour,  
Secretary of War"

The Secretary of War responded to the Governor's request by making an indefinite promise to aid, as follows:

"War Department  
February 18, 1828

Sir: I have the honor to acknowledge the receipt of your letter of the 28th of last month, stating that as the Legislature of the State of Illinois will, at its next session, make provision

for commencing the canal to connect the waters of the Illinois river and Lake Michigan, you request, on behalf of the State, that a survey of a proper route for the canal may be made by some competent officer, or officers, of the Engineer Department of the United States, and particularly setting forth the interest which the United States have in its judicious execution in reference to the public domain.

The canal is one in which the United States is highly interested, both as it regards the increased value which it would give to the public lands, and the convenience and facility which it will afford in a military point of view in communicating and moving the means of defense from the Lakes to the Mississippi, and from the more settled country to the Lakes. It would therefore afford the department much pleasure in complying with your request, if it shall be in its power to do so, and should Congress place the means at its disposal, an officer or other engineer will be directed in due season to fulfill the desire of the State over which you preside.

With great respect, I am, sir, your obedient servant,

James Barbour

To his Excellency, Ninian Edwards,  
Governor of Illinois."

The Engineer Department of the United States did not furnish assistance in surveying the canal location until late in 1829.

**Proceedings of the Sixth General Assembly, 1828-1829:** The Sixth General Assembly convened at Vandalia on December 1, 1828. On December 2, 1828, in his message to the General Assembly, Governor Edwards recommended that the canal be constructed under a loan based on the pledge of the lands granted by Congress. He further recommended that a legislative application be made to the President of the United States to have the location and survey of the route of the canal made by an Officer of the U. S. Engineer Department.

On December 5, 1828, that part of the Governor's message relating to the canal was referred to the House Committee on Internal Improvements with instructions to report a bill for construction of the canal. This Committee was also instructed to draft a Memorial to Congress asking for the grant of all lands within five miles on each side of the canal.

On December 15, 1828, a House Joint Resolution was enacted as follows:

*"Resolved by the Senate and House of Representatives of the State of Illinois, That our Senators in Congress be instructed and our Representatives requested, to use their best exertions to obtain a proper officer or officers from the Engineer Department, to survey the most practicable route for a canal, to connect the waters of Lake Michigan with the Illinois River."*

On January 5, 1829, the Committee on Internal Improvements reported H. B. 80, providing for construction of the canal. This bill moved rapidly through the General Assembly and was enacted into law by approval of the Council on Revision on January 22, 1829. This Act (appendix 14) provides for a Board of Commissioners appointed by the Governor, and these Commissioners were empowered to locate and design the canal, select



and sell the granted lands, and, when sufficient funds were available, to commence construction.

The House Journal for January 22, 1829 states that a Memorial to Congress, presumably the one that the House Committee on Internal Improvements was instructed to prepare, was reported and adopted. The Senate Journal for the same day states that the Senate had received the Memorial and concurred. The Senate Journal for January 23, 1829 states that the Memorial had been approved by the Council on Revision and sent to the Governor. The text of this Memorial has not been found among either State or Federal Documents.

**Proceedings by the Board of Canal Commissioners, 1829:** Edmund Roberts, Gersham Jayne, and Charles Dunn were appointed Canal Commissioners by Governor Edwards. The Commissioners met at Belleville on March 13, 1829 to organize the Board, Mr. Roberts being selected as President.

On March 16, 1829, the Commissioners met at Kaskaskia. Mr. Jayne was authorized to employ an engineer, if he considered it necessary, to aid such engineers as the United States might furnish to locate and survey the canal route. If the United States did not furnish an engineer, then the engineer to be employed by the Commissioners would be expected to locate and survey the route.

Apparently the Commissioners definitely expected that the United States would immediately send an engineer to locate the canal route, as they did not engage an engineer on their own behalf. In May 1829, Governor Edwards again wrote the Secretary of War in regard to surveying the route:

"Belleville, Ill., 1 May 1829

Sir: Taking it for granted that our Senators and Representatives in Congress had specially called your attention to a request of the Legislature of this State, for the assistance of an Engineer of the United States to survey the route of the Illinois and Michigan Canal, and that they had supported the application with a zeal proportioned to the importance of the object, our Canal Commissioners have been confidently expecting and anxiously waiting for the result of your determination. As the season for progressing with this highly desirable internal improvement has for some time since commenced, and it is now only delayed for the application that has been made to you, I beg leave to request the favor of hearing from you on the subject as soon as may suit your convenience.

I have the honor to be, sir

Ninian Edwards

Hon. Sec. of War"

The Governor's request to the Secretary of War was referred to the Engineer Department and that Department promised definite assistance in the autumn:

"Engineer Department  
Washington, May 25th, 1829

His Excellency  
Ninian Edwards  
Governor of Illinois

Sir:

The Secretary of War has referred to this Department your

letter of the 1st inst., relating to the survey of a route for the Illinois and Michigan Canal, and in reply I have the honour to inform you that the engagements of the officers under the control of this Department were such as to prevent the survey being made in the spring, but arrangements have been entered into for executing that object as early in the autumn as the climate will admit, which it is supposed will be about the 1st of October, and a sufficient force will be dispatched to finish the survey in a short time.

I have the honour to be Sir

Very Respectfully,  
Your obedient servant,  
G. Gratiot"

The Board of Commissioners next met at Springfield on September 2, 1829. The Minute Book shows the following actions taken:

"Ordered, that James Thompson be employed as surveyor for the Commissioners, and to draft two copies or plats of the canal route, taking for his guide such reports as the engineers may furnish us with.

Ordered, that Doct. Jayne be, and he is hereby authorized to employ some person in St. Louis to furnish the Commissioners with plats and field notes of the townships through which the contemplated canal route is to pass.

Ordered, that the Commissioners proceed on to Chicago to meet the engineers who are expected to arrive at that place by the first of October, for the purpose of locating the route of the canal, and that the next meeting of the Commissioners be at Kaskaskia as soon as the necessary surveys are made to enable them to make the selections."

On October 1, 1829, the Commissioners, the Surveyor, and necessary aides proceeded to Chicago to meet the engineers assigned by the War Department. These engineers, under the direction of Dr. Howard, did not arrive in Chicago until about October 24, 1829. Because of the lateness of the season and unfavorable weather, little was accomplished in locating the definite route for the canal. From the available reports, the work of location amounted to little more than a reconnaissance of the general route. The United States Engineers soon returned to Washington, promising, however, to return the following year. Their contribution towards establishing a definite location for the canal in 1829 is expressed in the following letter report from Dr. Howard to the Commissioners:

"Springfield, Illinois  
December 1, 1829

Edmund Roberts  
Gersham Jayne  
Charles Dunn  
Commissioners  
Gentlemen:

I regret to state that from the severity of the weather, I have been compelled to abandon for the present the survey of the Michigan and Illinois canal. Agreeably however to your request, I beg leave to state that the examinations and surveys already made convince me that the canal must be confined to the valley of this river, following the left bank of the Des Plaines at its upper portion and the right bank of the Illinois at its lower.

The proper point and mode of crossing the Des Plaines remains to be decided by the progress of the Survey. The canal to begin on the Chicago creek at the fork, near the point designated by the former commissioners, and proceeding by a direct course to the valley of the Des Plaines, but keeping to the south of the Portage lake.

Very Respectfully  
Your Most Obedient Servant  
Wm. Howard  
U. S. Civil Engineer"

The Board of Canal Commissioners met December 17, 1829 at Vandalia, for the purpose of making the land selections as provided by the Federal Act of March 2, 1827. The minutes show the following entry:

"James Thompson, appointed the surveyor of the canal route presented two maps or plats of the Townships and Ranges through which the canal runs, which were accepted by the Board and ordered to be placed among the papers." (exhibit 3)

The Board completed the land selections on December 21, 1829. The minutes show:

"The selection of the land by sections on the route of the canal was finished and the Commissioners agreed in selecting each alternate section having an odd number commencing with T32N-R1E within five miles on each side of the canal, making in all four hundred and ninety sections."

A duplicate list of the selections was made for the Governor in accordance with section 6 of the State Act of January 22, 1829. Negotiations with the General Land Office of the Treasury Department as to the actual grant of the selected lands were conducted by the Governor, as outlined in some detail in a subsequent chapter.

**Proceedings by the Board of Canal Commissioners, 1830:** The Commissioners took no action as regards the employment of a qualified engineer to survey and locate the canal route from the time of their first meeting in March 1829 until some time in the fall of 1830. It was more or less required by the State Act of January 22, 1829 that the Commissioners accept the services and findings of the United States Engineers if such were assigned to the work. The work of these engineers in the fall of 1829 was of minor consequence. However, they again resumed the survey in August of 1830, but, as in the previous year, the work was apparently of little or no use to the Commissioners in definite location of the canal for construction planning. The survey by the United States Engineers was resumed again in the summer of 1831 and a report on the survey transmitted to Congress on May 24, 1832. At that time, however, the maps and estimates to accompany the report had not yet been prepared (appendix 15).

In the fall of 1830, the Board took more definite steps to get construction under way, and, on October 1, 1830, took the following action:

"Ordered by the Board that Charles Dunn, one of the Canal Commissioners be and he is hereby authorized to proceed to Chicago and thence with the Engineer and Surveyor employed by him on the part of the Board proceed to locate permanently so much of the line of the 'Illinois and Michigan Canal' as the United States Engineers may have satisfactorily examined and recommended and that the said Commissioner from actual examination cause an estimate to be made of the cost of excavation and construction of that part of the canal so to be permanently located, and furnish to the Board a correct table and plan thereof at their next meeting."

On October 20, 1830, Mr. Dunn, James Bucklin the Engineer, and Samuel Alexander the Surveyor, began to survey and locate the canal line from Chicago River west. Apparently they started anew and generally disregarded such work as had previously been done. By November 12, 1830, when they ceased field work for the season, they had located some eighteen and one-half miles of line, and had also conducted subsurface explorations to determine the character of the ground through which the excavation was to be made.

On December 18, 1830, Bucklin reported to the Board (appendix 16) on the location and examination of the route from Chicago River to the Ausoganashkee Swamp. His estimate for this part of the canal alone, some 18 miles, and on the deep cut plan, was \$1,545,000, far above any previous estimate of the cost of the entire canal. He further estimated that to carry the excavation 8 miles further, as would be required on the deep cut plan, taking water from Lake Michigan, would cost an additional \$1,000,000. He recommended that consideration be given to a careful study of raising the summit level so as to avoid deep rock cutting, and supplying the summit level with water from the Calumet River by means of a navigable feeder instead of from Lake Michigan. He estimated that this substitute for the deep cut plan would cost only \$161,000 instead of \$1,545,000 as required for the first eighteen and one-half miles on the deep cut plan.

On December 27, 1830, the Board of Canal Commissioners submitted their report to the General Assembly as provided by law (appendix 17). The Commissioners reviewed their previous work but made no specific recommendations regarding expediting construction. The proceedings of the Board of Canal Commissioners reflect no further activity until May 1831.

**Proceedings of the Seventh General Assembly, 1830-1831:** The Seventh General Assembly convened at Vandalia on December 6, 1830. In his message of December 8, 1830 (appendix 18), Governor Edwards, while emphasizing the importance of the canal expressed the view that the lands could not be sold with sufficient speed to finance the canal and that other means would have to be found.

On February 15, 1831, the General Assembly passed an act (appendix 19) to amend the Act of January 22, 1829. The Commissioners were now definitely empowered to survey and locate

the canal without reference to the surveys of the United States Engineers, and were ordered to establish the capacity of the Calumet to serve as feeder for the summit level on the shallow cut plan. It was further made the duty of the Commissioners to consider the construction of a railroad instead of the canal. If the Commissioners found the Calumet adequate as a feeder and considered a canal more desirable than a railroad, they were to proceed with construction. If the Calumet was found not to be adequate, or if a railroad was found more desirable than a canal, further proceedings were to be deferred until the next meeting of the Legislature.

On June 1, 1831, the Board of Commissioners met at Chicago. Charles Dunn, the Acting Commissioner, Bucklin, and McClintock proceeded to examine the Calumet with a view to its practicability as a summit level feeder.

On June 16, 1831, Bucklin reported to the Board on the use of the Calumet as a canal feeder. This report (appendix 20) was not particularly favorable. The Board ordered the Acting Commissioner and Bucklin to complete the surveys for the canal line begun in 1830 and to make the necessary surveys for a railroad. In November 1831, Bucklin reported progress on these surveys (appendix 21). Bucklin made a final report to the Commissioners on January 1, 1833 (appendix 22), and, on January 30, 1833, the Board made a full report to the General Assembly (appendix 23). Bucklin estimated the total cost of a canal with summit level 10 feet above Lake Michigan at \$1,602,000. For the deep cut plan, taking water from the lake, the total cost was estimated at \$4,043,000. The total cost of a single track railroad was estimated at \$1,052,500.

**Proceedings of the Eighth General Assembly, 1832-1833:** On December 4, 1832, the Governor recommended that the General Assembly carefully consider the advantages of a railroad in lieu of the canal (appendix 24). He stated that a railroad would be his preference, and that it could be accomplished by a chartered company without expense to the State.

On March 1, 1833 (appendix 25), the General Assembly abolished the office of Canal Commissioners. The law of January 22, 1829 and the amendatory Act of February 15, 1831 were repealed, leaving no agency of the State constituted to carry on activities relating to canal construction.

The Eighth General Assembly enacted a Memorial to Congress (appendix 26) praying for such modification of the Federal Act of March 2, 1827 as would enable the State to use the grant of lands for the purpose of building either a turnpike, railroad or canal.

**Proceedings of the Twenty-second Congress, first session, 1831-1832:** The House of Representatives, on December 19, 1831, instructed the Committee on Internal Improvements to report on the expediency of authorizing Illinois to apply the

land grant of 1827 to the construction of a railroad in lieu of a canal. The Committee was also instructed to report:

"the expediency of appropriating twenty-five per cent of the proceeds of the sales of public lands in the State of Illinois, annually, until the work is completed for the construction of a canal or railroad from Lake Michigan to the Illinois River in lieu of the appropriation of land heretofore made for that purpose;"

The report of the Committee on Internal Improvements is shown by appendix 27.

**Proceedings of the Twenty-second Congress, second session, 1832-1833:** On March 2, 1833, Congress amended the law of March 2, 1827 so as to enable the State to utilize the land grant for the purpose of constructing a railroad in lieu of a canal, if desired. New time limits for beginning and completing the work were established (appendix 28).

**Proceedings of the Twenty-third Congress, first session, 1833-1834:** The State, after abolishing the office of Canal Commissioners on March 1, 1833, made renewed efforts to secure further aid from the United States. The State appears to have been divided upon the question of a railroad versus a canal. A proposal to construct a steamboat canal rather than a barge canal was advanced.

In Congress, the House of Representatives, on December 17, 1833, instructed the Committee on Roads and Canals to inquire into the expediency of affording some efficient aid to the State in the construction of a steamboat canal from Lake Michigan to the Illinois River. The Committee reported on June 25, 1834 (appendix 29), and recommended that further aid by the United States be held in abeyance until the State of Illinois adopted a plan, made careful examination of the nature of the material to be excavated, prepared full estimates of cost, and presented the whole proposal to Congress.

The above Committee on Roads and Canals asked General Gratiot, Chief of Engineers, for his views and estimates as to a steamboat canal. General Gratiot's views were reported to the Committee on June 6, 1834 (appendix 30). The General estimated that the cost of a canal not less than 100 feet wide, 6 to 10 feet deep, and taking water from Lake Michigan would cost about \$4,300,000, or about the same amount as Bucklin had estimated for a canal 40 feet in width.

By letter of December 30, 1833 to the Chairman of the Committee on Roads and Canals (appendix 31), Governor Duncan outlined the views of the State. He suggested a further land grant which would include the alternate sections reserved by the United States under the Act of March 2, 1827, and the extension of this grant from the western terminus of the canal along the Illinois River to its junction with the Mississippi.

## CHAPTER 8

### HISTORY OF THE LAND GRANT

**Negotiations with the General Land Office:** Immediately upon passage of the Act of January 22, 1829, providing for the construction of the canal, Governor Edwards opened negotiations with the General Land Office in relation to the land grant. It would seem to have been the Governor's feeling that the granted lands would be selected by the General Land Office:

"State of Illinois  
Executive Department  
January 24, 1829

Sir: The Legislature at its session which ended on yesterday, have made provisions for commencing the Illinois and Michigan Canal. It is therefore very desirable that the lands granted to the State for that purpose should be selected as soon as practicable. I hope it may be found convenient to take immediate measures for that object, and shall be happy to hear from you on the subject.

I have the honor to be  
Very respectfully,  
Ninian Edwards

To George Graham, Esq.  
Commissioner of the General  
Land Office"

On February 16, 1829, the General Land Office replied to the Governor, stating that the land selections could not be made until the General Land Office was furnished with a map showing the canal route as selected by the State. It was expected that the State would select the lands to which it would be entitled and a method of selection was outlined in detail by the General Land Office:

"General Land Office  
February 16, 1829

Sir: Your favor of the 24th Ulto. has been received and it is the wish of this office that the selection of the lands reserved by the Act of the 2d of March 1827, and granted to the State of Illinois should be made as soon as practicable, you must however be aware that such selections cannot be made or approved until this office is furnished with a plot showing the location of the canal by the State, as connected with the lines of the public surveys. So soon as such a plot is furnished, there can I presume be but little difficulty in designating or approving the lands that should be appropriated under the law to the General and State Governments respectively. In making an estimate of the lands granted to the State for the above object, we have presumed that the Canal would extend from Peoria to the lake. I think it probable however that you will not find it necessary to bring it lower down the Illinois than about that point where the Principal Meridian crosses the river in Township 33 North. Should the Canal however be brought down to Peoria, it would be advisable for the interest of the

State that it should be located on the East Side of the River in the whole distance below the 33d Township as a considerable portion of the lands on the West Side of the River is appropriated to satisfy the soldier claims.

When the Canal shall have been located, and to avoid all difficulties which may arise from a very literal and strict construction of the Act, I would suggest the propriety, of the following arrangements: First,—Beginning at the point where the Canal may commence on the Illinois River, let ten sections be laid off at right angles to the Canal, counting the fractional sections on each side of the River where it may interpose as equal in quantity to one entire section—. Second,—If the Canal should run through the West half of a section then let that section be considered as one of the sections on the East side of the Canal, and so if run through the East half of a section, let that section be considered as one of the sections lying on the West side of the Canal. Third,—Let the State authorities after examining the country determine at which end of the canal they may prefer to commence with designating the selections, and taking every alternate tier (either the first or second at their option) of the ten sections laid off as above stated.

Such an arrangement will both enable the General Government and the State authorities to sell their respective sections agreeably to the surveys now made,—but if we run five miles on each side of the canal, and take the termination of the distance as the limits of the ceded lands, then we should have to run a line on each side of the Canal through its whole distance which would everywhere be parallel to it, and would necessarily divide the exterior sections into irregular portions, and would require new surveys and calculations.

The map of Browne and Bancroft of which you no doubt have a copy exhibits the public surveys very accurately from Peoria to Lake Michigan.

With great respect,  
George Graham"

His Exe. Ninian Edwards

**Map of Canal Route Filed:** The records do not show any further negotiations with the General Land Office until December 1829. Evidently the survey of 1824 and the Post and Paul map were not considered as designating the selected canal route. As stated in Chapter 7, the Canal Commissioners, on September 2, 1829, authorized James Thompson to prepare two maps of the proposed route; these were submitted to the Commissioners on December 17, 1829 and accepted. One of these maps and a list of land selections were furnished to the Governor and immediately transmitted to the General Land Office:

"Belleville, Illinois  
December 25, 1829

Sir: I have the honor to transmit to you a map of the route which has been selected for the canal to connect the waters of Lake Michigan and the Illinois River with the selection of the lands granted to the State which has been made by the Canal Commissioners of this State according to law and as nearly agreeable to your instructions as was practicable.

If these selections should be approved by the President it is hoped that patents will be transmitted as soon as practicable.

Wishing to avoid delay, I have no time to have a copy taken



of the map herewith sent, and should be very glad if you would send it back after you are done with it.

I have the honor to be

Very respectfully, sir,  
Ninian Edwards"

An original copy of the Thompson map is not known to exist today among the canal or State records. The map sent to Washington is among the records of the General Land Office. A certified copy has been secured and placed in the State Archives. Exhibit 3 is a reduced scale duplicate of this certified copy.

On January 16, 1830, the General Land Office acknowledged receipt of the map and list of selections:

"General Land Office  
January 16, 1830

Sir:

Your letter of the 25th ulto. covering a plot of the route of the Illinois Canal, and exhibiting the limits within which the reserved sections are to be selected, has been received. So far as I have had time to examine the subject, I believe there will be no difficulty in adjusting this question. The principles on which the lands are laid off and the selections made nearly correspond with my former communications on the subject and the selections by odd number which throw all the school lands on the portion reserved for the U. S. is not considered unreasonable—it is probably that in consequence of taking the exterior or guide lines by sectional lines, without reference to fractions that there is a larger quantity of land reserved than that specified in the law. So soon however as the calculations are made I will write to you more fully on the subject.

/s/ Geo. Graham

His Exc. Ninian Edwards  
Belleville, Illinois"

**Method of Computing the Quantum:** Again on January 16, 1830, the General Land Office defined in detail the method of computing the total quantum of land covered by the grant, as the law of March 2, 1827 was interpreted by that office:

"General Land Office  
16 January 1830

Sir:

Inclosed herewith for your information a copy of my letter of the 3 of November last to the President of the Board of Canal Commissioners of Indiana respecting the location for the Wabash Canal and explanatory of the mode proposed for ascertaining the quantity to be granted for that Canal, and the principles therein laid down have been acceded to by those commissioners and the selection made in conformity to them. Those principles are equally applicable to the Reservations for the Illinois Canal and upon examining your map and list of sections by them the following are found to be the result:

From the termination of the Canal in Section 21, T33N, R1E to its intersection with the line between Ranges 8 and 9 East it runs through 46 tiers of Sections, and the Canal in this distance crossing the tiers at nearly right angles the State is entitled to the minimum number of 5 sections in each of the 46 tiers or the 230 sections for that portion of the Canal, but by being governed by the red lines on the map it will be perceived that 12 of those tiers embrace 11 sections instead of 10 and

that the State by taking the odd sections within those lines will have 239 sections or 9 sections more than the number to which she is entitled. By throwing off from either extremity of the long tiers the surplus section in each and thus reducing them all so as to embrace 10 sections in each case, the proper number will be granted to the State.

The direct distance from the intersection of the canal with the line between Ranges 8 and 9E to its commencement at the mouth of the Chicago Creek is found upon examination of the Surveys to be the hypotenuse of the triangle the base of which is 34-42/100 miles with a perpendicular of 33-22/100 miles or 47-87/100 miles, and the course of which being nearly NE and SW the State is entitled to the maximum of 5 sections of land for each mile of that distance or estimating it at 48 miles to a total of 240 sections for that part of the canal. But the State by taking the section with odd numbers within the red lines East of the 8th Range would have 252 sections, or an excess of 12 sections over the proper number—this excess should be excluded from the selections by throwing off that number of sections from the location farthest from the Canal line.

To the manner in which selections have been made no objection is made, and the only difficulty that now prevents their being submitted to the President for his approval arise from this exception in the number of the sections proposed to be reserved by the State.

With great respect,  
Your obedient servant  
Geo. Graham

His Excellency,  
Ninian Edwards, Gov. of the State of Ills.  
Belleville, Ill."

Governor Edwards did not agree with the method of computing the quantum and so advised the General Land Office. He did, however, agree to accept the Land Office ruling on a temporary basis:

"Belleville, Illinois  
2 February, 1830

Sir:

Your letter of the 16 ult. on the subject of the land granted this State for the purpose of making a canal to connect the waters of the Illinois river with Lake Michigan was received by the last mail. I cannot accord with the principles laid down by you for ascertaining the quantity of land to which the State is entitled, but not having the map before me I am unable to illustrate my views on the subject. It appears to me however very clear that, Congress intended to grant five sections for every mile of the canal, however serpentine its course and that any rule for ascertaining the quantity of land granted the State should conform as nearly as possible to that intention.

With this view it would seem that the reduction of each mile of the canal to a straight line and apportionment of the land upon that principle is all that is called for by the necessity of the case and is more consistent with the legislative intention than the one you have adopted. It is as difficult to make a mile of canal on a curved as straight line and the expediency or necessity for assistance being just as strong in the one case as the other it is not to be presumed that Congress ever intended to make any discrimination between them. It is only to suppose this canal as curved as canals have in some instances necessarily been to show that your principle of limiting the

# 5

# Department GENERAL

(Faint)

J. N. B. M.

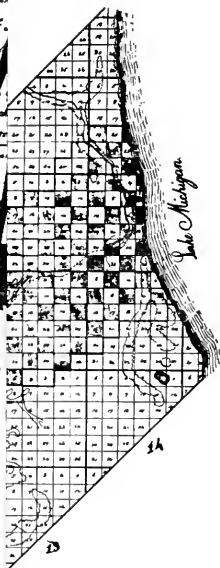
General Land Office,  
having copy of map of  
Gladwin the former  
2, 1837, and also the same  
to this Office by the  
are and land survey  
file in this Office.

In testimony



State of Michigan  
General Land Office

Lake Michigan



XXV

XXXIV

XXXIII

XXXII

By the State of Michigan  
as being granted to the State of Illinois  
the President on the 18th of May  
on the 5th of March 1830. For the tract of land  
of 9 to 14 inclusive a similar list was approved by  
on the 21st of May 1830 of which a certified  
copy is to be given to the Governor on the 20th of May

Attest of Agents, 1832  
A. C. C. & J. J. C. 22. 1874  
L. C. & L. C. 22. 1874

Company Documentary History  
of  
ILLINOIS & MICHIGAN CANAL

Exhibit 3

# 5

Department of the Interior,

GENERAL LAND OFFICE,

(Washington, D.C., November 23<sup>rd</sup>, 1872)

I, N. B. McPherson, Commissioner of the General Land Office, do hereby certify that the enclosed having been approved by the Illinois and Michigan Canal Commissioners, the joining of the act of Congress approved March 3, 1857, and the lands included in the same, and the map to the Illinois and Michigan Canal, dated 23 November 1872, are true and correct copies of the originals now on file in this office.

I have herewith enclosed my own name, and certify the land of this Office to be offered at the City of Washington, on the day and year above written.

N. B. McPherson  
Commissioner of General Land Office



XXV  
XXIV  
XXIII  
XXII

Map 2 Cat 2 3 4 5 6 7

XL  
XXXIX  
XXXVIII  
XXXVII  
XXXVI

Lake Michigan

The last surveying the lands which had been bought by the State of Illinois was approved by the President under the land act of 1857, and the lands included in the same, and the map to the Illinois and Michigan Canal, dated 23 November 1872, are true and correct copies of the originals now on file in this office.

Approved of August 1<sup>st</sup> 1872  
Comd. Genl. of the Army  
James G. Thompson

To Accompany Documentary History  
of  
THE ILLINOIS & MICHIGAN CANAL  
Exhibit 3

quantity of land granted the State to one-half of what would be contained in a parallelogram ten miles wide with the length of a direct line from one extreme point of the canal to the other only to defeat the evident intention of Congress and the reasonable expectation of the State.

But the delays in the commencement of this great work have already so greatly exceeded the expectations of our legislature and disappointed the anxious wishes of the people of the State that I can venture to assure you our Canal Commissioners will cheerfully accede to your own views of the subject rather than be further retarded in their operations, and I beg leave on behalf to request that you will forward as soon as practicable patents for such portions of lands as the President may consider the State entitled to. If any doubt remains as to a part I see no reason why it may not await future adjustment. A portion of these lands is now advertised for sale and it would be better for the State to give up anything that is doubtful than be disappointed in raising the funds for the commencement of the work in question, at the time now contemplated by the Commissioners. These gentlemen are now at their homes in points of the State. It will be some time before they can be heard from or I should have referred the subject exclusively to them.

Very Respectfully,  
Ninian Edwards

George Graham, Esq.  
Comm. Gen. Land Office"

**Land Certificates Issued:** The complete historical correspondence between the General Land Office, the Governor, and the Canal Commissioners is not available and perhaps not extant. On March 5, 1830, however, two hundred and twenty-one sections of land in ranges one to eight inclusive were certified to the State. On May 21, 1830, an additional two hundred and forty sections in ranges nine to fourteen inclusive were so certified:

"General Land Office  
22 May 1830

Sir:

Your letter of the 28th ulto. has been received, and agreeable to the request therein contained I enclose herewith a certified copy of a list of two hundred and forty sections granted to the State of Illinois under the 'Act of the 2d March, 1827' for that part of the Illinois and Michigan Canal between Lake Michigan and Range 8 East, agreeably to Statement contained in my letter to you on the 16th January last. A letter dated the 29th March last has been received from Mr. Roberts, the President of the Canal Board. According to the views of this office as expressed in the letter of January last, but in which he has not designated the Sections to be thrown off from the locations as marked on the map, and I have therefore to reduce the Selection East of the 8 Range and West of the Lake to the number included in the enclosed list excluding therefrom the twelve sections too many which were farthest from the Canal line. Whenever I am informed which of the Sections out of the nine tiers between the 2d and 8th Ranges specified in my letter to you of the 8th of March last you may desire to have granted to the State to make up the quantity to which she is entitled for that part of the Canal West of the 9th Range, I will transmit you the necessary certificate for these.

Geo. Graham

His Excellency Ninian Edwards"

At the time the land selections were made by the Canal Commissioners, nine of the sections selected in ranges one to eight inclusive had been previously disposed of by the Government. By Act of Congress approved August 29, 1842, the State was authorized to select 5,760 acres out of any unsold lands in the State in lieu of these nine sections. The State selected lands in Winnebago County and received certificates therefor on February 24, 1843.

In 1848, the view expressed by Governor Edwards in 1830 that the State was entitled to five sections of land for every mile in length of the canal, however serpentine its course, prevailed in final adjustment of the Indiana grant. By Act of August 3, 1854, Congress accorded the same treatment to Illinois:

*"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Governor of the State of Illinois is hereby authorized to cause to be selected the balance of the land to which that State is entitled under the provisions of the act of the second of March, eighteen hundred and twenty-seven, granting land to aid that State in opening a canal to connect the waters of the Illinois River with those of Lake Michigan, out of any of the unsold public land in the State subject to private entry at one dollar and twenty-five cents per acre, and not claimed by pre-emption, the quantity to be ascertained upon the principles which governed the final adjustment of the grant to the State of Indiana for the Wabash and Erie Canal, under the provisions of the act of Congress approved the ninth of May, eighteen hundred and forty-eight."*

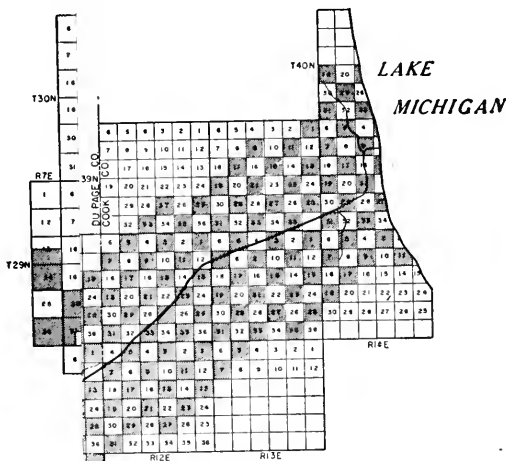
The final adjustment of the grant is outlined in the following letter from the General Land Office:

"General Land Office  
August 24, 1854

His Excellency J. A. Matteson  
Governor of Illinois  
Springfield, Illinois

Sir: I have the honor to transmit the following statement of the quantity of land which the State of Illinois will be entitled to select under the act approved 3d instant, in full satisfaction of the grant of lands to aid the State in opening a canal to connect the waters of the Illinois river with those of Lake Michigan, made by the acts approved 2d March 1827, and August 29, 1842. The length of the canal as reported by Wm. H. Swift, Esq., President of the Board of Trustees of the Canal, in his letter to this office, bearing date the 18th, February 1850, is 101.35 miles, which on the principle which governed in the final adjustment of the Wabash and Erie Canal grant, in Indiana, allowing five sections or 3200 acres to each mile, makes the whole grant—acres 324,320.

From which deduct the following amount selected and approved by President Jackson, on the 5th of March and 21st of May, 1830.....	285,669.11
This amount, selected under the provisions of 29th August 1842 and approved by President Tyler, 24th February, 1843 .....	5,755.26
Making total selected and approved up to this date.....	291,424.37
Leaves acres	32,895.63



The shaded sections indicate the lands along the canal route certified to the State under the provisions of the Act of Congress approved March 2, 1827. The lands in ranges one to eight inclusive were certified to the State on March 5, 1830. The lands in ranges nine to fourteen inclusive were certified to the State on May 21, 1830.

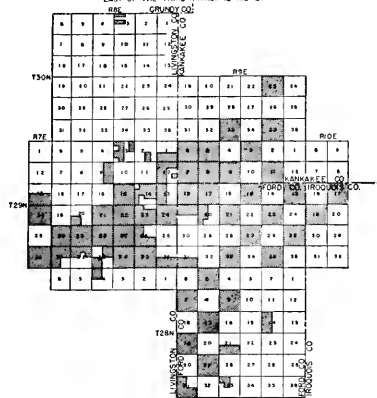
#### SUMMARY OF GRANT

	Acres
On the canal route	285,629.17
Winnebago County	5,755.26
Livingston, Kankakee and Iroquois Counties	32,699.31
Total	324,083.74

## THE CANAL LAND GRANTS

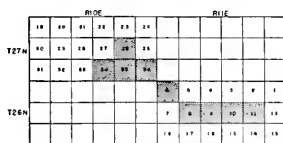
To Accompany Documentary History  
OF  
THE ILLINOIS AND MICHIGAN CANAL  
EXHIBIT 4

EAST OF THE THIRD PRINCIPAL MERIDIAN



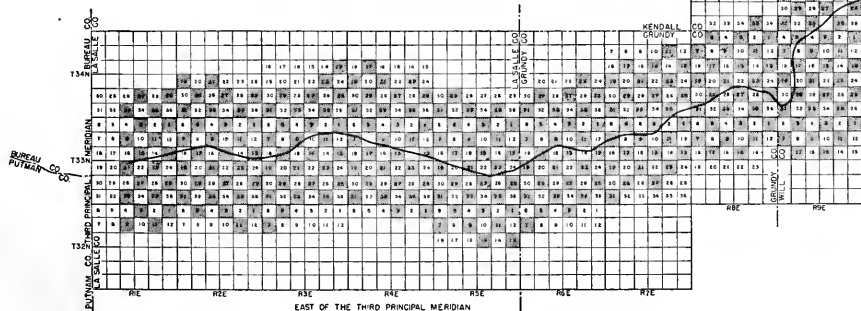
The shaded sections or parts of sections indicate the lands in Livingston, Kankakee and Iroquois Counties selected by and certified to the State under the provisions of Act of Congress approved August 3, 1854 in their satisfaction of the original grant of March 2, 1827 certified to the State August 18, 1855 and March 20, 1856.

EAST OF THE FOURTH PRINCIPAL MERIDIAN



The shaded sections indicate the lands in Winnebago County selected by and certified to the State in lieu of one section of land along the canal route which had been sold by the United States prior to selection by the State under the Act of March 2, 1827 Certified to the State February 24, 1843 (See Act of Congress approved August 29, 1842)

LAKE MICHIGAN



The shaded sections indicate the lands along the canal route certified to the State under the provisions of the Act of Congress approved March 2, 1827. The lands in ranges one to eight inclusive were certified to the State on March 8, 1830. The lands in ranges nine to fourteen inclusive were certified to the State on May 21, 1830.

## SUMMARY OF GRANT

On the canal route ----- Acres  
Winnebago County ----- 283,629.17  
Livingston, Kankakee and Iroquois Counties ----- 5,755.26  
Total 324,355.74

STATE OF ILLINOIS  
DEPARTMENT OF PUBLIC WORKS AND BUILDINGS  
DIVISION OF WATERWAYS

## THE CANAL LAND GRANTS

To Accompany Documentary History  
OF  
THE ILLINOIS AND MICHIGAN CANAL  
EXHIBIT 4

Note  
This map has been compiled from certified copies of the original records at the General Land Office, Department of the Interior. The canal route shown is the route as built.



As the quantity yet to be selected in full satisfaction of the grant. As provided by the act of 3d August 1854 'any of the unsold public lands in the state subject to private entry at one dollar and twenty-five cents per acre, and not claimed by pre-emption', that is, lands, the price of which does not exceed \$1.25 per acre, are liable for selection for the above quantity, and I have accordingly this day instructed the land offices throughout the State to respect such selections, when returned to them by your duly authorized agents, whom I have to request may be instructed not to exceed in the aggregate the amount specified. Fair copies of the lists, immediately after the selection shall be completed, should be transmitted to this office, which will be examined and approved, if found correct, and certified copies thereof, under the seal of this office will be returned to you, in order that the grant may be adjusted at any early day.

John Wilson  
Commissioner"

The Canal Trustees, pursuant to the above letter and the Act of August 3, 1854, selected the remainder of the lands due, in final adjustment of the grant, from lands in Kankakee, Livingston, and Iroquois Counties. The lands so selected were certified to the State on August 18, 1855 and March 20, 1856. A map of the lands granted to the State is shown by exhibit 4, and the detailed lists of the lands is shown by appendix 32.

**Confirmation of Title to Granted Lands:** At various times, the Federal Government has granted tracts of public lands to the States and Territories for canals, highways, and like schemes of internal improvement. Many of the laws making these grants do not specifically convey the title in fee simple, or require patents to be issued therefor. To clarify the status of titles under such grants, the Congress, on August 3, 1854, enacted the following law:

*"An act to vest in the several States and Territories the title in fee of the lands which have been or may be certified to them.*

*Be it enacted by the Senate and House of Representatives in Congress assembled, That in all cases where lands have been, or shall hereafter be, granted by any law of Congress to any one of the several States and Territories; and where said law does not convey the fee simple title to such lands, or require patents to be issued therefor; the lists of such land which have been, or may hereafter be certified by the Commissioner of the General Land-Office, under the seal of said office, either as originals, or copies of the originals or records, shall be regarded as conveying the fee simple of all the lands embraced in such lists that are of the character contemplated by such acts of Congress and intended to be granted thereby; but where lands embraced in such lists are not of the character embraced by such acts of Congress, and are not intended to be granted thereby, said lists, so far as these land are concerned, shall be perfectly null and void, and no right, title, claim, or interest shall be conveyed thereby."*

**Status of Land Grant under Federal Act of March 2, 1827:** In 1908, the Department of the Interior published a statement showing the land grants made by Congress to aid in the construction of canals, railroads, and so forth. This statement

(exhibit 5) reflects the position of the General Land Office as to the status of the land grants and the laws under which they were made. The General Land Office, as shown by this statement, considers the Federal Act of March 30, 1822 as legislation affecting but not increasing the grant.

The final adjustment of the Illinois grant was made upon the principle which governed the final adjustment of the Indiana grant for that portion of the Wabash and Erie Canal between the Ohio line and Terre Haute. In adjusting the Indiana grant, that State was allowed five sections per mile for each mile between said points. However, the General Land Office seems to have ruled:

"In addition it was held that as the act of 1824 reserved a strip 90 feet in width on each side of the canal in perpetuity, the State lost the fee to that extent as to any of the alternate sections covered by the grant of 1827, and was entitled to other lands in lieu of the strip thus reserved."

The above ruling does not appear to have been applied in the case of the Illinois grant. The total area to which Illinois was found entitled in full satisfaction of the grant was 324,320 acres. The amount actually certified to the State was 324,282.64 acres, and to secure this quantity all of the land in the odd-numbered sections selected by the State must be included. It seems evident that the Federal Act of March 2, 1827 was held by the General Land Office to convey to the State of Illinois, in fee simple, the total quantum of land in each of the alternate odd-numbered sections selected by the State and through which the canal passes. And further, that by Act of Congress of August 3, 1854, the title to this entire quantum of land was reiterated to be that of fee simple. It will be noted that this law is annexed to the final list of certifications (appendix 32).

**Nature and Purpose of Land Grant:** The nature and purpose of the land grant, under the Act of March 2, 1827, was expressed by the Public Land Commission in House Executive Document No. 47, Forty-sixth Congress, third session, as follows:

"Land equal to two and one-half sections in width on each side of the canal was granted, the United States reserving each alternate section, which reservation then inaugurated has become the rule in land grants for improvements. When the lines of the canals were established selections of lands were to be allowed, and the title in fee at once passed to the States who were to dispose of the same. The act provided that the construction of the canal should be commenced within 5 years and completed within 20 years, and upon failure to comply with these conditions the States were to pay the United States the amount received for any lands previously sold. Purchases from the State were protected by the title in fee having passed to the State upon location of the canals. This was equal to a cash advance by the Nation for construction purposes, as the lands were sold by the States and the money thus obtained built the improvements."

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## STATEMENT SHOWING LAND GRANTS MADE BY CONGRESS TO AID IN CONSTRUCTION OF RAILROADS, WAGON-ROADS, CANALS, AND INTERNAL

## IMPROVEMENTS, TOGETHER WITH DATA RELATIVE THERETO, COMPILED FROM THE RECORDS OF THE GENERAL LAND OFFICE. Continued

Chronological number	Date of grant	Nature	Page	Object of grant	Remarks	Termination of State and present owner	Additional legislation affecting this and its existing grant			Date and extent of withdrawal	Status of State relative to surplus lands	Number of acres withdrawn in satisfaction of grant	Remarks
							Date of act.	Section	Page	Object			
1	Mar. 2, 1807	4	39	To aid in opening a canal to unite at navigable points the waters of the Wabash River with those of Lake Erie.	A quantity of land equal to one-half of five sections in which each side of canal.	State of Indiana	General Land Office draft entirely with State in adjustment of grant.	Mar. 26, 1807	4	47	Authorizing State to locate canal to connect the navigation of the rivers Wabash and Miami of Lake Erie, and granting right of way to such in width as may be required.	None	The length of this canal from its outlet into the Wabash River to the mouth of the Miami River is 10 miles. The canal was completed in the year 1810. It was the first canal in the United States.
10	Feb. 27, 1810	1	46	do	Quantity of land equal to one-half of five sections in which each side of canal.	do	do	do	do	do	do	do	do
11	Feb. 27, 1810	1	46	do	Quantity of land equal to one-half of five sections in which each side of canal.	do	do	do	do	do	do	do	do
12	Aug. 30, 1810	3	142	To aid in opening a canal to unite at navigable points the waters of the Wabash River with those of Lake Erie.	Quantity of land equal to one-half of five sections in which each side of canal.	do	do	do	do	do	do	do	do
13	Mar. 2, 1810	6	70	To aid in extending and completing the Wabash and Erie Canal from Terre Haute to the Ohio River at Cincinnati.	Quantity of land equal to one-half of five sections in which each side of canal.	do	do	do	do	do	do	do	do
14	May 8, 1810	6	272	For entire length of canal at above described.	Quantity of land equal to one-half of five sections in which each side of canal.	do	do	do	do	do	do	do	do
2	Mar. 2, 1807	4	39	To aid in opening a canal to unite at navigable points the waters of the Wabash River with those of Lake Erie.	Quantity of land equal to one-half of five sections in which each side of canal.	State of Indiana	General Land Office draft entirely with State in adjustment of grant.	Mar. 26, 1807	4	47	Authorizing State to locate canal to connect the navigation of the rivers Wabash and Miami of Lake Erie, and granting right of way to such in width as may be required.	None	The length of this canal from its outlet into the Wabash River to the mouth of the Miami River is 10 miles. The canal was completed in the year 1810. It was the first canal in the United States.
30	June 30, 1810	1	710	do	Quantity of land equal to one-half of five sections in which each side of canal.	do	do	do	do	do	do	do	do
31	Aug. 30, 1810	3	142	do	Quantity of land equal to one-half of five sections in which each side of canal.	do	do	do	do	do	do	do	do
32	Mar. 2, 1810	4	354	To aid in opening a canal to unite at navigable points the waters of the Wabash River with those of Lake Erie.	Quantity of land equal to one-half of five sections in which each side of canal.	do	do	do	do	do	do	do	do
33	Aug. 30, 1810	3	142	do	Quantity of land equal to one-half of five sections in which each side of canal.	do	do	do	do	do	do	do	do
34	Aug. 30, 1810	3	142	do	Quantity of land equal to one-half of five sections in which each side of canal.	do	do	do	do	do	do	do	do
4	May 2, 1810	4	330	To aid in extending the Miami Canal from Jackson to the mouth of the Wabash River.	Quantity of land equal to one-half of five sections in which each side of canal.	State of Indiana	General Land Office draft entirely with State in adjustment of grant.	Mar. 2, 1810	4	330	Authorizing State to extend the Miami Canal from Jackson to the mouth of the Wabash River.	None	The length of this canal from its outlet into the Wabash River to the mouth of the Miami River is 10 miles. The canal was completed in the year 1810. It was the first canal in the United States.
45	Apr. 1, 1810	4	80	do	Quantity of land equal to one-half of five sections in which each side of canal.	do	do	do	do	do	do	do	do
46	Aug. 30, 1810	10	110	do	Quantity of land equal to one-half of five sections in which each side of canal.	do	do	do	do	do	do	do	do
47	Mar. 2, 1810	10	424	To aid in opening a canal to unite at navigable points the waters of the Wabash River with those of Lake Erie.	Quantity of land equal to one-half of five sections in which each side of canal.	do	do	do	do	do	do	do	do
48	May 26, 1810	5	210	To aid in opening a canal to unite at navigable points the waters of the Wabash River with those of Lake Erie.	Quantity of land equal to one-half of five sections in which each side of canal.	do	do	do	do	do	do	do	do
49	June 30, 1810	5	210	To aid in opening a canal to unite at navigable points the waters of the Wabash River with those of Lake Erie.	Quantity of land equal to one-half of five sections in which each side of canal.	do	do	do	do	do	do	do	do

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,  
The honorable the Secretary of the Interior.

SIR: I have the honor to submit herewith a tabulated statement showing the land grants made by Congress in aid of railroads, wagon roads, canals, and river improvements, with data relative thereto, compiled from the records

of this Office. As great care has been exercised in its preparation, it is believed to be as accurate as it is possible to make it from the data available, and its approval is recommended.

Very respectfully,

R. A. BALLINGER,  
Commissioner.

Approved November 27, 1907.

FRANK PIERCE,  
Acting Secretary.

To Accompany Documentary History  
OF  
THE ILLINOIS AND MICHIGAN CANAL  
Exhibit 5

## CHAPTER 9

### SALE OF LANDS ALONG THE CANAL ROUTE

**Sale by the Canal Commissioners, 1830-1843:** The lands granted to the State by the United States under the Act of March 2, 1827 were first placed on sale at Springfield, April 19, 1830. Land sales were held intermittently until 1843. The Act of February 21, 1843 creating the Trusteeship provided that lands unsold at that time were not to be sold until after completion of the canal. A patent issued by the State, and covering land sold in 1830, appears in the Canal Commissioners report for the year 1900 as follows:

"Whereas, it appears from certificate of James Campbell, treasurer of Board of Canal Commissioners, that Alfred W. Caverly and James Campbell did on the seventeenth day of November, 1830, purchase of State of Illinois for the sum of \$163.75 the tract of land hereinafter described, that is to say the fractional part of the S. W.  $\frac{1}{4}$  of section 1-33-3 which lies east of Fox river and the fractional part of S. E.  $\frac{1}{4}$  of section 1 which lies south of Fox river, containing 84 acres, and also the fractional part S. E.  $\frac{1}{4}$  section which lies north of Fox river, containing 47 acres, containing in all 131 acres according to the survey made by surveyor Gerard, of the U. S., which said tract of land is part of and parcel of the donation made to the State of Illinois by the United States by an act of Congress of the United States. An act to grant a quantity of land to the State of Illinois for the purpose of aiding her in opening a canal to connect the waters of Illinois with those of Lake Michigan. Approved March 2, 1827, and whereas by an act of the General Assembly of said State entitled an act to provide for the construction of the Illinois and Michigan canal, approved January 22, 1829, power is given to the Canal commissioners to sell the land so granted to the State, and the Governor is required to execute patents to the purchasers. Now know ye that under and by virtue of the power and authority contained in said recited act of General Assembly of Illinois, there is granted to the said Alfred Caverly and James Campbell, their heirs and assigns forever, subject to the rights reserved and secured to the said Canal Commissioners in the said recited act.

In testimony whereof I have caused these letters to be made patent and the seal of the State to be affixed. Done at Vandalia on 10th of January, 1831.

By GOVERNOR JOHN REYNOLDS"

**Sale by the Canal Trustees:** The lands conveyed to the Trustees by the State, under trust deed executed in 1845, were first placed on sale in 1848. At this time, some four-fifths of the lands granted to the State by the Act of March 2, 1827 were unsold. In 1848, the canal, "as built," had been surveyed and, in the sale of lands abutting the canal, the Trustees used a special form of certificate whereby the canal, and strips ninety feet

wide on either side, were excepted from sale. A typical certificate reads:

"Certificate for land lying on canal  
Illinois and Michigan Canal Office  
Chicago, May 9, A.D. 1851.

No. 1042

#### THIS CERTIFIES,

That Anthony Ferguson has, this day, purchased of the Board of Trustees of the Illinois and Michigan Canal, W.  $\frac{1}{2}$  N.W. South Feeder, Section 21, in Township 37, Range 12, East of the third principal Meridian, excepting and reserving so much of said tract as is occupied by the Canal and its waters, and a strip ninety feet wide on either side of said Canal, containing 56 acres, more or less, at the rate of two dollars and 50 cents per acre, amounting to the sum of one hundred and forty dollars and no cents; that he has paid toward the same the sum of thirty five dollars and no cents; being one-quarter of said purchase money, and also six dollars and thirty cents, being one year's interest in advance, on the residue of said purchase money, the said Board has also received from said purchaser his three several promissory notes for thirty five dollars and no cents each, due in one, two, and three years, respectively, for the residue of said purchase money—said notes bearing interest at six per cent, per annum, payable annually in advance. And that upon the full payment of the said promissory notes, and the interest thereon, promptly, according to their tenor and effect, the said purchaser will be entitled to receive from said Board a good and sufficient deed of conveyance of said lot; but in case of a failure on the part of said purchaser to pay such interest, or the residue of such principal, within twenty days after the same, or any installment thereof becomes due, he shall forfeit said lot and all claim thereto and all payments made on account thereof.

In Witness Whereof, the said Board of Trustees have caused the Corporate Seal of said Board to be hereunto affixed and the name of the Treasurer of said Board to be hereunto subscribed, the day and year first above written.

{ corporate seal  
of Illinois and  
Michigan Canal }

(W. H. Swift) for the Treasurer

Received July 18, 1854 from the Board of Trustees of the Illinois and Michigan Canal, a Deed for the property above described.

Anthony Ferguson  
By Thos. Kennog"

**Sale of Lands by the United States, Act of June 6, 1834:**  
As of 1834, Congress had made several grants of lands in northern Illinois, as, for example, the canal grant of 1827 or the grant of the school sections. On June 6, 1834, Congress provided for the sale of the remainder of the public domain in this area. In the State of Illinois, that part of the State lying north of the dividing line between townships thirty and thirty-one north of the old base line was divided into two land districts. The north-south boundary between these two districts was the line between ranges three and four, east of the Third Principal Meridian. Section 4 of the Act of June 6, 1834 reads as follows:

"And be it further enacted, That the President shall be authorized, so soon as the survey shall have been completed, to cause to be offered for sale, in the manner prescribed by law, all the lands lying in said land districts, at the land offices in the respective districts in which the land so offered is embraced, reserving only section 16 in each township, the tract reserved for the village of Galena, such other tracts as have been granted to individuals and the State of Illinois, and such reservations as the President may deem necessary to retain for military posts, any law of Congress heretofore existing to the contrary notwithstanding."

**Further application for Land Grant:** On January 16, 1835, the Ninth General Assembly enacted the following Resolution, which was transmitted to the Senate of the United States, February 4, 1835:

*Resolved by the general assembly of Illinois:* that our senators and representatives in Congress, be requested to use their influence to procure the passage of a law of Congress granting to this State the reserved alternate sections of land on the canal route from Lake Michigan to the Illinois river, for the purpose of further aiding this State in constructing a canal or railway between said lake and the Illinois river.

*Resolved:* That they be requested to use their influence, should such a law pass, so to guard it with provisions, that the State may use the lands herself in making the work, or dispose of them to a company upon such terms as the legislature may provide, in order to insure the accomplishment of the work as speedily as possible.

*Resolved:* That should they not be able to procure an unconditional grant of said land to the State, then they are hereby requested to use their exertions to procure the passage of a law containing a pledge that, if the State will cause the work to be completed by the State, or a company, within ten years next after the passage of such an act, the title to the said alternate sections shall rest in the State or her grantees.

*Resolved:* That, if they cannot procure the grant to be made upon either of the terms above that then they use their influence to obtain for the State a preference in the purchase of those lands at a reasonable price for the whole, allowing to the State a reasonable credit for the same, and that they include in one law, which they may procure the passage of relating to the canal, the military reservation, or fractional section of land on which Fort Dearborn, at Chicago, stands.

*Resolved further:* That they use their exertions to except from the operation of any pre-emption law those reserve alternate sections on the canal route.

(Signed) James Semple, *Speaker of the House of Representatives*  
Thomas Mather, *Speaker of the Senate pro tem.*"

**Presidential Proclamation of February 12, 1835:** By Presidential Proclamation of February 12, 1835, the lands authorized to be sold by the Act of June 6, 1834 were placed on sale. Land Offices were established at Chicago and Galena. The Land Office Registers, now in the custody of the State Auditor at Springfield, show that all of the land in the alternate, even-numbered sections was sold, no part thereof being reserved as right of

way for the canal. The sections examined do not show that any part of such sections was purchased by the State.

**Form of United States Patent:** The form of patent issued by the United States, and covering a tract of land through which the canal, "as built," passes, is shown by the following document, found in the canal records:

*"United States to Asaph Webster  
Copy of Patent*

Certificate }  
No. 1303 }

The United States of America  
To all to whom these presents  
shall come greeting.

Whereas, Asaph Webster of Cook County, Illinois has deposited in the General Land Office of the United States a certificate of the Register of the Land Office at Chicago whereby it appears that full payment has been made by the said Asaph Webster according to the provisions of the Act of Congress of the 24th of April 1820, entitled 'An Act making further provisions for the sale of the Public Lands', for the west half of the north-west quarter of section twenty in township thirty-five North of Range ten East in the district of lands subject to sale at Chicago, Illinois, containing eighty acres according to the official plat of the survey of the said lands, returned to the General Land Office, by the Surveyor General, which said tract has been purchased by the said Asaph Webster.

Now know ye that the United States of America, in consideration of the premises and in conformity with the several Acts of Congress, in such case made and provided, have given and granted, and by these presents do give and grant, unto the said Asaph Webster and to his heirs, the said tract above described; To have and to hold the same, together with all the rights, privileges, immunities and appurtenances, of whatsoever nature, thereunto belonging, unto the said Asaph Webster, and to his heirs and assigns forever.

In testimony whereof, I, Martin Van Buren, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, the first day of October, in the year of Our Lord one thousand eight hundred and thirty nine, and of the Independence of the United States the sixty fourth.

L. S. By the President: Martin Van Buren  
By M. Van Buren, Jr. Secretary  
H. M. Garland Recorder of the General  
Land Office"



## CHAPTER 10

### STATUS OF RESERVATIONS CREATED BY THE ACT OF MARCH 30, 1822

**Reservations Created by the Act of March 30, 1822:** By the Act of March 30, 1822, Congress proposed to reserve from sale, through the public lands, a right of way, and to vest the use thereof in the State for the canal. This reservation was contingent upon certain conditions being observed by the State. On March 2, 1827, Congress granted to the State the odd-numbered sections through which the canal passes, and, on June 6, 1834, authorized the sale of the even-numbered sections through which the canal passes "any law of Congress heretofore existing to the contrary notwithstanding." The question as to whether or not acts of Congress subsequent to that of March 30, 1822 abrogated, affected, or removed the reservations contained therein has been the subject of some debate.

**The Views of Congress:** As previously stated, the Committee on Roads and Canals, House of Representatives, Twenty-third Congress, first session, was instructed, on December 17, 1833, to inquire into the expediency of aiding the State in the construction of a steamboat canal. The report of this Committee (appendix 29) was presented to the House on June 25, 1834. This report refers to the several acts of Congress as follows:

"Of these routes, the latter possesses a decided advantage over the former, apart from the present condition of the population and improvement of the country to be immediately benefited by opening such a communication, and the whole of this route is comprehended within the jurisdiction of a single State, one of the largest in territorial extent, and destined by the fertility of its soil, to be one of the largest, in point of numbers, the Union. The United States, as the actual proprietor and concurrent sovereign of the national domain adjacent to the lakes, manifested an interest in this route, by an act of Congress of the 30th of March, 1822 which authorized the State of Illinois to open a canal through the public lands, to connect the Illinois river with Lake Michigan. This act empowered the State of Illinois to 'survey and mark the route' of such a canal, and, reserving from future sale, vested in that State ninety feet of land on each side of such route as might be approved for that object. A condition was annexed to this grant, that it should become void, provided the State of Illinois did not survey and return to the Treasury Department a map of the canal within three years from the date of the grant; or, if the canal should not be completed 'and suitable for navigation', within twelve years from the passing of the act.

Believing that the contemplated canal would advance the price of the lands in its vicinity, this act 'reserved from future sale, till otherwise ordered' every section of the public land 'through which the canal route might pass'.

By a subsequent act, bearing date the 27th of March 1827, Congress granted to the State of Illinois, to aid in the construction of this canal, 'a quantity of land, equal to one-half of five sections in width', on each side of the route thereof, 'reserving each alternate section to the United States'; and subjected the land, so granted, to the disposal of the Legislature of Illinois, under several conditions: among which, was, that the canal should be commenced within five years, and completed in twenty years, or the State should pay to the United States the proceeds of sale of any of the granted lands which she might have sold. By an act of the 2d of March, 1833, amendatory of the last, the State of Illinois is authorized to dispose of the lands before granted, for the purpose of making a railroad, instead of a canal, should such be the pleasure of that State, and the time for commencing and completing the canal, or its substitute, the railroad is extended for five years, under all the obligations of the antecedent acts of Congress, neither of which is expressly repealed."

This Committee report does not consider the Act of March 30, 1822 as "expressly repealed" and the effect, if any, of the Act of June 6, 1834 is not mentioned. The Committee report does cite the provision whereby the canal was to have been completed by March 30, 1834.

The various documents in this history show that, at that time, the canal had not as yet been commenced, and that there was no provision in State legislation for proceeding with the work.

**Views of the General Land Office:** The General Land Office has on several occasions expressed its views in relation to the status of the reservations created by the Act of March 30, 1822:

"DEPARTMENT OF INTERIOR,  
General Land Office  
Washington, D. C. May 8, 1894

Board of Canal Commissioners,  
of the State of Illinois

Lockport, Ills.

Gentlemen:

I am in receipt of your letter of March 20, 1894, relative to certain land in Sec. 30 T39N R14E of the 3rd P. M. You state a suit is now pending in the U. S. Circuit Court 'for this Dist., at Chicago', in which the plaintiff one Wheeler, claims title to some tracts of land in Sec. 30, etc., and add:

'This land is a part of the Canal lands granted by the Act of Congress of 1822, 3rd U. S. Statutes at Large 659, and the other lands in aid of the Canal granted by the Act of Congress of (March 2) 1827, 4th idem 234.

You also state: The Canal Commissioners are advised that it is important for their interests in this case that they have copies—'of any correspondence of record in your office between the authorities of the United States and those of this State with reference to the subject matter of the mapping of the route of the Canal and the selection of the Canal lands under the acts above referred to. They are informed that such correspondence is on file, and it appears to be referred to in a letter of Governor Edwards of Illinois of September 25, 1829, of which we have copy attached to a

certificate of the Commissioner of the General Land Office bearing date November 23, 1822.'

You also state: There is another matter which the Canal Commissioners are advised is important, and as to which they desire to have— 'copies of any information in your Office of record'. — that relates to the reservation from sale referred to in the second section of Act March 30, 1822, (3, Stat., 659) which as therein stated was to subsist until otherwise specially directed by law—

'Counsel have thus far been unable to find any legislation of Congress removing such reservation but it has occurred to them that perhaps there may have been some proclamation or other administrative action of the President or the Department bearing upon its reservation or its removal'.

You conclude your said letter: 'As to the official correspondence referred to above they desire that it cover any correspondence under the act of 1822, as well as the later correspondence under the act of 1827. It is not supposed that the correspondence above called for will be very voluminous or expensive in the preparation. If it should appear upon search to be otherwise, please advise us to that effect, and of the approximate expense of furnishing copies'.

In reply to the foregoing I would state:

Considerable time has been bestowed on the subject-matter of your letter, and from the data thus obtained I find.

The Act of March 30, 1822 (3 Stat., 659) granted to the State of Illinois authority to survey and mark through the public land of the United States the route of a canal connecting the Illinois River with the Southern bend of Lake Michigan— 'and ninety feet of land on each side of said canal shall be forever reserved from any sale to be made by the United States, except in cases hereinafter provided for'. After the provisions alluded to the act concludes with 'Sec. 2' to the effect that every section of land through which said canal route may pass shall be, and the same is hereby reserved from future sale, until hereafter specially directed by law.

This act it will be perceived authorizes the survey of the canal, reserves 90 feet on each side thereof (under certain provisions), and reserves every section through which the said canal route may pass. It is also here observed that the survey of this Township 39N Range 14E of 3rd Principal Meridian (as shown by official plat) was not approved until March 16, 1831, at Surveyor's Office at St. Louis.

The Act of March 2, 1827, (4, Stat., 234) granted to the State of Illinois, a quantity of land equal to one-half of five sections in width on each side of said canal, to be selected by the 'commissioner of the land office' under the direction of the President of the United States.

This act neither defines as to the number—odd or even— of the sections granted, nor alludes to the mode of adjustment, or to the alternate sections. It appears, however, after the approval of the Township Plat (of the township mentioned in your letter), which as shown was March 16, 1831, the lands in said township 39N R14E were on June 15, 1835, offered for sale, except the odd-numbered sections specified as Sections 3, 5, 7, 9, 15, 17, 19, 21, 27, 29, 31, 33, and 35, which were noted on Tract-Book as 'canal lands'. This offering was under authority of the President's Proclamation of February 12, 1835.

The Act of August 29, 1842, (5, Stat., 542), authorized the State of Illinois to cause to be selected from any of the unsold public lands of that State, not subject to the right of pre-emption the quantity of 5,760 acres, in lieu of certain speci-

fied sections (all of which, be it noted, were odd-numbered sections) heretofore selected by the State under the Act of March 2, 1827 (above) but which had been sold and patented to individuals by the U. S. before the location by the said State had been approved.

The act of August 3, 1854 (10, Stat., 344), authorized the Governor of the State of Illinois to select balance of land to which the State was entitled under said act of March 2, 1827, out of any unsold public land in that State, subject to private entry at \$1.25 per acre, and not claimed by pre-emption—'the quantity to be ascertained upon the principles which governed the final adjustment of the grant to the State of Indiana for the Wabash and Erie Canal, under the provisions of the act of Congress approved the ninth of May, eighteen hundred and forty-eight'. (9, Stat., 219).

Under the acts cited, and the provisions referred to in act last mentioned the adjustment of this canal was effected by this Office, and I further find that, what is now termed, in railroad grants, the map of definite location was transmitted to this office by Governor Ninian Edwards' letter of December (not September as stated by you) 25, 1829, said letter dated at Belleville, Illinois. The Governor concludes his letter with, 'Wishing to avoid delay, I have no time to have a copy taken of the map herewith sent and should be very glad if you would send it back after you are done with it'.

It does not appear from any of the correspondence, thus far examined, that this map was sent back as requested, I note, however, that by office letter 'F' November 3, 1882, William Thomas (Gen'l. Supt., Illinois & Michigan Canal, Lockport, Illinois), was furnished with a 'certified tracing copy of map of the Illinois & Michigan Canal, filed under the provisions of Act, March 2, 1827, and also the letter transmitting said map to this office by the Governor of Illinois, dated 25th December 1829'.

I find also, that by letter of January 16, 1830, to Governor Edward of Illinois, from Commissioner of the Land Office, G. Graham; a copy of Commissioner Graham's letter of November 3, 1829, to the President of the Board of Canal Commissioners of Indiana, 'respecting the locations for the Wabash Canal, and explanatory of the mode proposed for ascertaining the quantity to be granted for that Canal', was enclosed, and Governor Edwards was advised—'Those principles are equally applicable to the reservations for the Illinois Canal, and upon examining your map and list of selections by them the following are found to be the result'. Then follows an exemplification of the proposed manner of adjustment of the (Illinois) Canal, the letter concluding:

'To the manner in which the selections have been made no objection is made, and the only difficulty that now prevents their being submitted to the President for his approval arises from this excess in the number of the Sections proposed to be reserved by the State'.

It is noted, in this letter, the discussion is as to the odd-numbered sections reserved to the grant.

Commissioner Graham's letter of March 8, 1830, to Governor Edwards, also indicates the odd-numbered sections, as appertaining to the grant, and as so selected by the State.

Commissioner John Wilson's letter of August 24, 1854, to Governor Joel A. Matteson (of Illinois), shows the result of the adjustment of this grant: The length of the Canal being found as 101.35 miles; Canal entitled to 324,320 acres; Had selected and approved (under President Jackson) 285,669.11 acres; Had selected (Sec. 2 Act—Aug. 29, 1842—approved by President

Tyler) 5,755.26 acres; aggregating in selections 291,424.37; and leaving 32,895.63 acres—'The quantity yet to be selected in full satisfaction of the grant'.

If from all this data, you can definitely determine exactly what you desire, an attempt will be made to furnish you with any exemplifications of the records that can be found in the premises. The cost of same is fifteen cents per 100 words, and one dollar for each exemplification, or certificate. By grouping a number of copies under one certificate, with seal attached, some expense may be saved.

Finally, as to SE4, Sec. 30, T39N R14E of 3 Principal Meridian (which I understand is the particular tract involved in suit mentioned); I would observe there is no reservation mentioned as to any right of way of the said canal, either in the final certificate of Patrick Welch's Cash Entry (private) No. 1246, made October 2, 1834 (embracing this tract); or, the patent July 6, 1836. The entire Section 30—39N, 14E, is embraced in seven private cash entries, of which Welch's said entry forms one, six of these entries made in November 1834, subsequent to that of Welch, were patented at various dates.

As Section 30, does not appear to have ultimately inured to the grant; your mention of same 'as a part of the Canal Lands granted by the Act of 1822', is not clearly understood. For if it was ever reserved (before survey) under Section 2, Act of March 30, 1822, subsequent legislation, by defining the quantum, and method of adjustment, not to mention the Executive Order referred to, appears to have removed the reservation.

Respectfully,

Edw. A. Bowens

Acting Commissioner"

Again, in 1898, the Canal Commissioners requested further information from the General Land Office and were advised as follows:

"Department of the Interior,  
General Land Office  
Washington, D. C., March 15, 1898

Mr. Leon McDonald  
Gen'l Superintendent, Board of Canal  
Commissioners, Lockport, Illinois

Sir:

I am in receipt of your letter of March 4, 1898, in which you state:

'There was a survey and map of the proposed route of the Illinois and Michigan Canal made in 1824, by Messrs. Post and Paul, engineers in the employ of the then Board of Commissioners'.

Your request, if this Office has such a map on file, that a certified copy be sent to you, 'being particular to say that it was a map of the survey made in 1824' and you would remit the cost of same on being advised as to the amount. You add, that you require such copy in the matter of a pending suit.

In reply I would state:

By office letter 'F' May 8, 1894, addressed to the 'Board of Canal Commissioners, State of Illinois, Lockport, Illinois relative to certain lands (set forth in letter March 20, 1894, from said Board), to wit: in Sec. 30, 39N 14E of 3rd Principal Meridian, you were advised fully as to ability of this Office to furnish copies exemplifying records in this office appertaining to the grants to the State of Illinois for the canal in question; which copies the Board appeared to require in a suit then pend-

ing in the U. S. Circuit Court, in which the plaintiff was one Wheeler.

In said letter 'F' May 8, 1894, a comprehensive summary of the several acts of Congress, relating to the grant was given, as well as the status of the lands then in question. Reference was also made to 'the map of definite location' which was transmitted to this office by Governor Ninian Edwards' letter of December 25, 1829, with a request that it be returned (to the Governor), as he had had no time to have a copy made. It was further stated that the map had not been returned, as a copy had been subsequently furnished, as shown by office letter 'F' November 3, 1882, to William Thomas, General Superintendent, Illinois & Michigan Canal, Lockport, Illinois'.

I find by reference to letter 'F' November 23 (not 3rd as stated) 1882, that a copy of 'Map of the Illinois & Michigan Canal, filed under provisions of the Act of Congress approved March 2, 1827, and also the letter transmitting said map to this office by the Governor of Illinois, dated 25th December 1829'—was sent to Mr. Thomas for which he paid the sum of nine dollars.

You may be furnished with such copy for said sum, if you should require it, and transmit the required amount.

That you may know what this map purports to show, I will quote, in full, the designation of same appearing on the said Map—'Map of that part of the State of Illinois through which it is contemplated to construct a canal—(Scale 3 miles to an inch) by James Thompson, A.D. 1829. Copied by Robert Mills, draughtsman of the General Land Office in 1832. Northeastern Land District'.

This is not the map as designated by you, but it is the only map that can now be identified as indicating for purposes of adjusting the grant, and upon which the line of Canal is delineated.

I would state in conclusion that this office does not certify in exemplifications of records (on file in the office), any facts as suggested by you, any further than such facts may appear in the records themselves. Copies exemplifying, truly and literally, the particular record involved are all that can be furnished.

Respectfully,  
/s/ August Hermann  
Commissioner"

Again, in 1912, the General Land Office expressed views relating to the reservations:

"F 232505 SSM  
DEPARTMENT OF THE INTERIOR  
Washington

May 10, 1912  
Illinois and Michigan Canal

Messrs. Vail and Vette,  
Title Trust Building  
Chicago, Illinois

Sirs:

I have your letter of April 24, 1912. In reply, I advise that the Act of March 30, 1822 (3 Stat., 659), authorized the State of Illinois to survey and mark through the public lands the route of a canal to connect the Illinois River and Lake Michigan, and reserved for the use of the canal ninety feet on each side thereof, for canal purposes only, under certain conditions therein expressed. The second section of the act reserved from sale every section through which the route of the canal might pass, until thereafter specifically directed by law.

To further aid in opening the canal, Congress, by act of March 2, 1827 (4 Stat. 234), granted to the State a quantity of land equal to the half of five sections in width on each side thereof, reserving each alternate section to the United States, to be selected by the Commissioner of the land office, under the direction of the President of the United States.

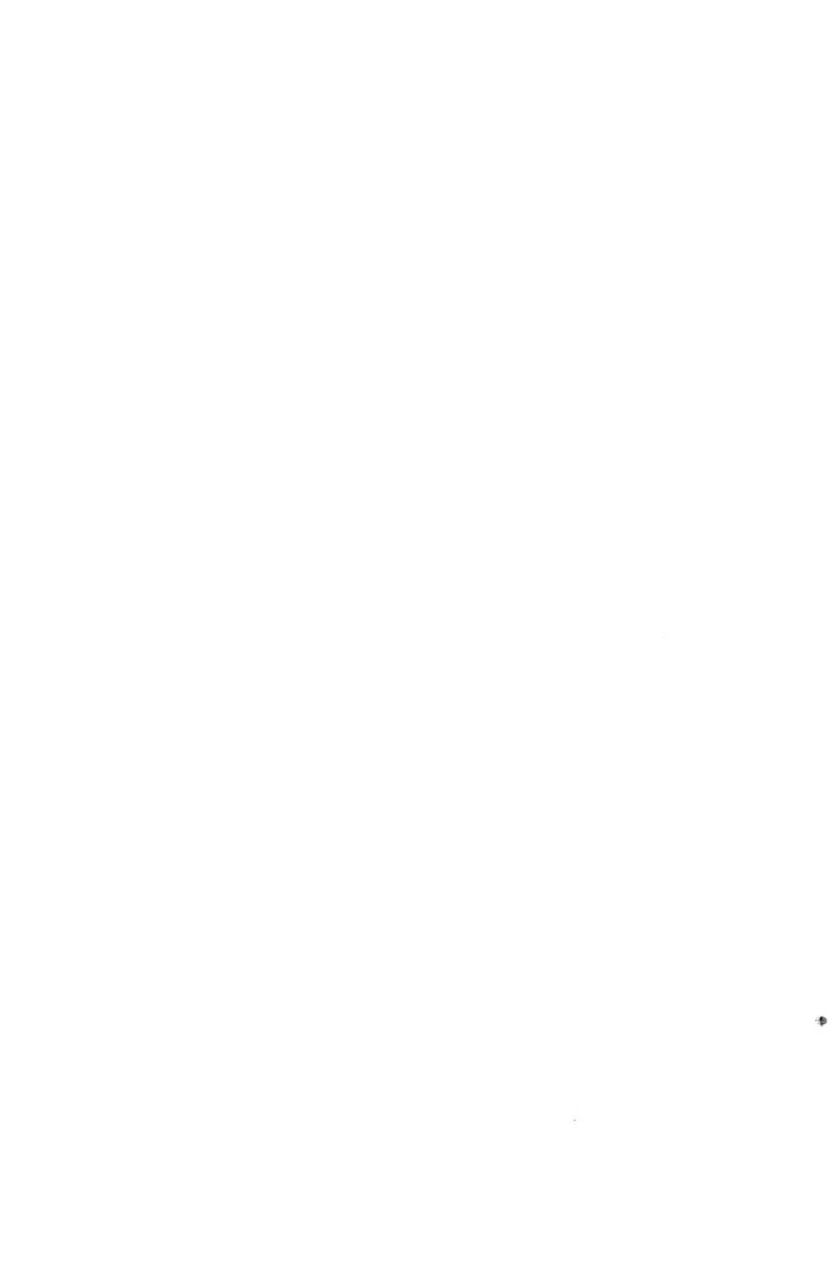
I am advised by the Commissioner of the General Land Office that his records show the map of the location of the canal was received at his office with a letter of Governor Ninian Edwards of Illinois, dated December 25, 1829, and that the grant made by the act of March 2, 1827, has been adjusted and satisfied. He further states that his records do not show any revocation of the reservations directed by the act of March 30, 1822, and I am unable to find that there has been any legislative revocation thereof. There has been no ruling that the act of 1822 became inoperative, for any reason.

You do not mention any particular land, but the records show that the vacant, odd-numbered sections within five miles of the canal were conveyed to the State, and that some, if not all, of the even-numbered sections crossed by the canal, which were reserved to the Government, were offered for sale on June 15, 1835, under the Proclamation of the President on February 12, 1835, and disposed of. The act of 1827, making the grant of land, and the offering of the reserved government sections appear to have removed the reservations created by the act of 1822.

Very respectfully  
/s/ Samuel Adams  
First Assistant Secretary"

**Views of the State of Illinois:** So far as known, from the documentary sources consulted in the preparation of this history, the State offered no objection to the sale of the alternate even-numbered sections reserved to the United States by the Act of March 2, 1827. The sale of these sections appeared to have caused renewed interest in the canal. In his message of December 7, 1835 (appendix 33), Governor Duncan said:

"There are two other subjects of deep interest, requiring your immediate action which rendered it necessary in my judgment, to convene the General Assembly at this time; the first of these in importance is the canal. It will be seen by the correspondence with Governor Coles, president of the Board of Canal Commissioners, herewith communicated, that the effort to obtain a loan under the act of the last session entirely failed. I therefore trust that this subject will receive such consideration as its great importance demands. The sale of the alternate sections by the United States in the canal reservation at Chicago in June last furnishes the clearest evidence that the land in that reservation and the town lots in Chicago owned by the State, may be safely estimated at from one to three millions of dollars, and as the work progresses their value will increase,———."





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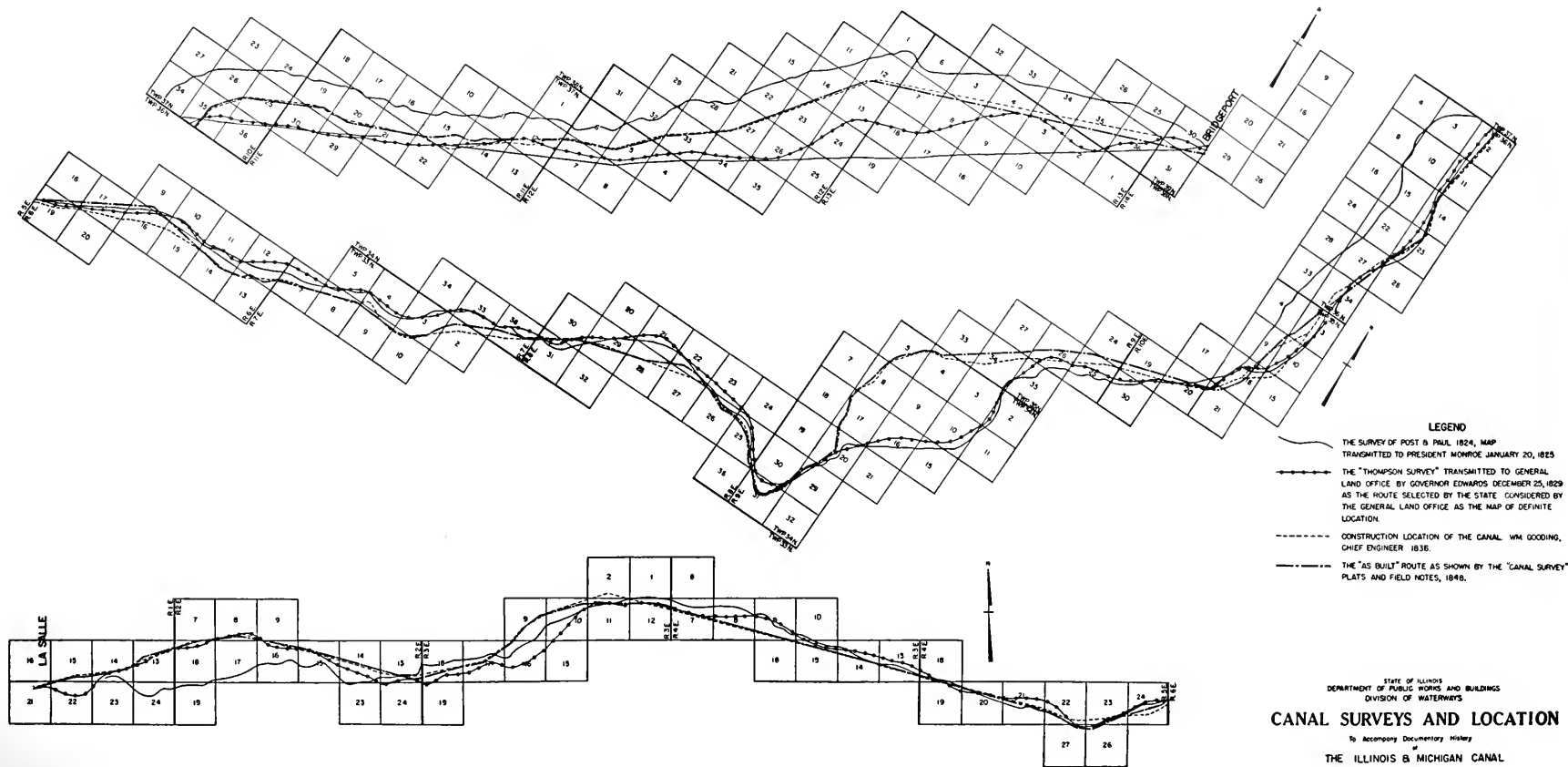
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## CHAPTER 11

### LANDS, DAMAGES, AND RIGHTS OF WAY

**General Considerations:** The documentary record previously presented shows that, by the Act of March 30, 1822, Congress proposed to reserve from sale a right of way through the public lands, and to vest the use of these reserved lands in the State for a canal. This reservation of a right of way through the public lands was conditioned upon fulfillment, by the State, of certain specific provisions of the Act.

In 1827, the odd-numbered land sections across which the canal passes were granted to the State in fee simple.

Under the Enabling Act of 1818 and subsequent proceedings, title in fee simple to section sixteen in each township in the State passed to the State in trust for the use of schools in such township.

By Act of Congress of June 6, 1834, the even-numbered land sections through which the canal passes were authorized to be sold and such sales began in 1835. In these even-numbered sections, all the lands were placed on sale, none being reserved from sale and the use thereof vested in the State as right of way for a canal.

**The Status in 1836:** The canal was not definitely located upon the ground until 1836, and various revisions of this location were made during the construction period. When the canal was located in 1836, some, if not all, of the lands in the school sections had been sold by the school authorities. Some, if not all, of the lands in the even-numbered sections, other than school sections, had been sold by the United States, no part thereof being reserved from sale as right of way for a canal. In the odd-numbered sections, some lands had been sold by the State, but of the lands actually crossed by the canal, "as built," only some four quarter-sections on the main line of the canal had been sold. These facts pose the question as to how the Canal Commissioners secured a right of way through the lands, particularly the even-numbered sections, which had passed into private ownership prior to the location and construction of the canal.

**Powers of Condemnation:** The Act of January 9, 1836 gave the Canal Commissioners the following power:

"It shall be lawful for them to enter upon and use any lands, water, streams and materials of any description necessary for the prosecution of the works contemplated by this Act."

The annual report of the Canal Commissioners for the year 1836 states:

"No condemnation of private property has yet been attempted. The existing laws on the subject are not calculated, the Commissioners think, to insure justice and as a short delay would be inconvenient to neither party, it was deemed best to suggest the propriety of a special provision by the Legislature."

By amendatory Act of March 2, 1837, the General Assembly provided further powers in regards to lands, damages, and rights of way. This Act provides:

"That the judge of the Circuit Court within whose circuit the said canal lands are situated shall, on or before the first Monday in June next, appoint three commissioners, citizens of this State, who shall not be interested in any lands within the district of country through which said canal passes and who do not reside in said district, to be a board for the appraisement and determination of all questions of damages which may arise from the construction of said canal, a certificate of whose appointment under the hand of the said judge shall be recorded in each county in which any of the said canal lands lie. It shall be the duty of said commissioners whenever requested by the board of canal commissioners, to examine into all questions of damages which may arise between said canal commissioners and any individual or individuals, to make reports within twenty days after such examination in writing to the said canal commissioners, and file a copy of such reports in the clerk's office of the circuit court of the county in which the land may lie on which any damages may be claimed, which reports shall contain a full account in writing of said claim, the manner in which it may arise, and all such testimony as may be taken by them in relation to the same; also an assessment of the damages, if any are awarded, accompanied by a description of the property to be surrendered by such individual to the State, where the question of damages may relate to the right of way or surrender of land for the use of hydraulic or other purposes. Upon the return of said report and assessment of damages aforesaid, the said Circuit Court, at its succeeding term, if in its opinion the damages assessed are not too high and if no objection be made to the same, shall cause an order to be made of record directing the said board of canal commissioners to pay to such individual or individuals in whose favor he may decide, such sum as may be awarded for his or their damages as aforesaid, with such costs as such party may have expended in the defense of such claim for damages, to be certified by the court: *Provided, however*, that if upon examination of such returns, assessment and testimony furnished as aforesaid by said commissioners, if the said court shall be of opinion the said assessment is too high, or the individual or individuals in whose favor such assessment shall be made shall be dissatisfied with the same, the said court shall proceed to hear and determine the question of damages in such manner as it may deem equitable and just; and the said court is hereby vested with full power and jurisdiction to make all orders and decrees in the premises and to enforce their observance, necessary to carry into full effect all or any decision which may be made: *Provided*, that appeals shall be allowed to the Supreme Court, as in other cases: *And provided, also*, that the court shall have power to compel all persons to pay all costs occasioned by their objections or exceptions to assessments which are not sustained by the court; and the court shall also have power in all cases to make such orders in respect to cost as may be deemed equitable and just. In assessing damages, regard shall be had as well to the benefit as the injury arising from the construction of the canal.

The canal commissioners shall insist upon the right of the

State to the right of way, through and upon all lands heretofore sold or granted by the State, and also the use of all water and materials required in the construction of the canal under the reservation contained in the tenth section of the Act passed January the 22d 1829, providing for the construction of said canal, and under the reservation contained in subsequent laws on the same subject. But if the courts shall decide against this right, then the same mode of proceeding shall be had in reference to said lands, water and materials as in other cases.

The board of assessment shall in all cases deliver copies of their reports to each of the parties interested or their attorney before filing a copy with the clerk, as herein required, and they shall certify the fact of delivering such copies upon the copy filed with the clerk as aforesaid; and the delivery of such copy shall be evidence of notice, and the court shall proceed to adjudicate upon the rights of all parties so notified, without requiring any other or further notice to be given. For good cause shown the court may continue all causes and questions arising under this Act from term to term as in other cases."

By Act of February 1, 1840, the above procedure was somewhat simplified. This Act provides:

"It shall be the duty of the commissioners, when any person or persons claim damages that they may have sustained, by the construction of the Illinois and Michigan canal, to settle with any such person or persons for the damages they may have received, and pay the same; *Provided*, if the commissioners are of opinion the claim is too high, and the claimant will not take a fair compensation, they shall call the appraisers as required in the Act to which this is an amendment, and they shall proceed, as required in said Act. Said appraisers shall receive a reasonable compensation, not to exceed five dollars per day, for their services, for the time necessary to perform the duties required of them as such appraisers, and shall be paid out of the canal fund."

By Act of March 1, 1847, the General Assembly established a time limit and procedure for filing all unliquidated claims against the State arising from construction of the canal:

*"Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That all persons having unliquidated claims against the State of Illinois from any cause whatever, shall make out all the vouchers and present the claim, together with his own affidavit of the correctness of the same, previous to the first day of January, eighteen hundred and forty-nine, and have the same filed in the office of the Secretary of State, so that the future legislatures may know what unliquidated claims do exist against the State, and the grounds upon which they are founded.

The unliquidated claims arising from the canal shall all be proved up by witnesses, before the State trustee on said canal, which shall embrace all the testimony relating to the said unliquidated claims, and no further testimony shall be allowed to be brought in, to substantiate said unliquidated claims after they are once filed as above."

**Rights of way acquired under Statutory Proceedings:** As of 1844, the main canal and the Fox River Feeder had been placed under construction. The annual report of the Canal Commissioners for 1844 shows that, as of November 15, 1844, charges to the contingent fund for right of way amounted to \$29,233.23.

The financial records do not show expenditures from this contingent fund for rights of way, and whether such were ever made, or as to what lands they might apply, is at present unknown. This matter was considered in detail in 1897, for in that year E. W. Willard was instructed by the Canal Commissioners to make a complete investigation, with the following scope:

"Gentlemen:—By direction of your honorable board, given soon after you took possession of the records and canal property in 1897, I was requested by the general superintendent of the Illinois and Michigan canal, to make an investigation of all documents which could be found in the canal office at Lockport, and all public records and documents at the State capitol at Springfield, Illinois, for the purpose of securing documentary evidence, which, with records of the office, would establish the ownership of the State of Illinois to the ninety-foot reserve on each side of the canal through the sections of land which were not included in the grant of 1827, and also to discover, and if possible recover to the State of Illinois all lots, pieces and parcels of land which had been lost to the State of Illinois, owing to the fact that the trustees who had charge of the State property from 1843 to 1871, made no schedule of unsold pieces and parcels, when at the expiration of their trust, they re-conveyed to the State of Illinois all canal property remaining under their control."

Willard's report, which is both extensive and carefully documented, was printed in full as part of the report of the Canal Commissioners for the year 1900. The data presented by Willard, insofar as it relates to any right, title, or interest the State may have acquired, particularly in the even-numbered sections, under statutory proceedings are briefly as follows.

For the Fox River Feeder, Willard shows two State patents covering lands in Section 1, Township 33 North, Range 3 East. These lands were sold in 1830 and 1836, and the patents cite that the conveyances were subject to the rights reserved to the Canal Commissioners by the Act of January 2, 1829.

For the Kankakee Feeder, Willard presents no data bearing on the question of right of way.

For the Du Page Feeder, Willard states that this feeder was constructed on lands owned by the State.

For the Calumet Feeder, Willard lists a number of releases of right of way taken, and shows details of payments made, lands involved, and nature of the release deeds executed.

For the main canal, Willard explains the acquisition of right of way through the even-numbered sections as being based on the application of the Act of Congress, March 30, 1822. Willard states:

"As bearing directly and intelligently upon the title to the 90-foot reserve through the even sections of land, I have taken the liberty of quoting from the brief of Messrs. Lincoln and Stead of Ottawa, Illinois, in the matter of *Werling v. Ingersoll*, Supreme Court of Illinois."

"The grant of 1822 was an absolute grant of a strip 90 feet in width on each side of the canal to be forever reserved from sale to be made by the United States and the use thereof for-

ever shall be and the same is hereby vested in the State for a canal, until the canal route was determined, the title was afloat; upon its determination, the location of the 90-foot strip became certain and the title of the State acquired precision and attached to it as of the date of the grant."

"The State of Illinois being so invested with the title to said lands, the survey and marking out of the route of said canal under and in compliance with said Act of Congress and the construction of said canal by the State connecting the Illinois river with the southern bend of Lake Michigan under and by virtue of said act and the Act of Congress of March 2, 1827, gave precision to the title and attached it to the particular lands within 90 feet on each side of said canal as constructed by the State."

**Further Considerations as to Right of Way:** In the annual report for 1900, the Commissioners call attention to the careless manner in which the records pertaining to the early history of the canal had been kept. When the canal was constructed, substantially all of the lands affected by the canal in the odd-numbered sections were owned by the State. The record of the contingent fund, however, shows substantial charges to the right of way account, and it is reasonable to suppose that such charges would apply to lands other than those in State ownership. A consideration of these facts raises the question as to whether or not, in 1897-1900, when Mr. Willard made his investigation, all the data relative to acquisition of rights of way was extant. This question cannot be positively answered by documented material, but the situation as of 1851, some three years after completion of the canal, is reflected in litigation with the Chicago and Rock Island Railroad. This litigation, *Board of Trustees of Illinois and Michigan Canal v. The Chicago and Rock Island R.R. Co.* (14 Ill. 314), was a condemnation suit originated by the Chicago and Rock Island Railroad to acquire right of way across some parts of the canal lands, including the 90-foot strips. The question before the court was whether or not the railroad had power to condemn these lands, the question of specific ownership not being involved. The briefs filed with the Supreme Court of Illinois reflect the following opinions as to the ownership of the canal right of way in the even-numbered sections as of 1851. The brief for the Canal Trustees states, in part:

"And your orators further show unto your honor that, by means of the said acts of Congress and action under the same, they are advised and therefore so charge, that the aforesaid grant of 90 feet on each side of said canal was confirmed unto said State, and any forfeiture in consequence of the failure of said State to comply with any condition or conditions of said grant was waived by Congress, and your orators say that they are informed and believe, and therefore charge that the United States never did any act to declare such forfeiture but, on the contrary thereof, have waived the same, and your orators expressly charge that they are advised that there has never, since the passage of said Act of March 30, 1822 been any act of Congress passed, authorizing the sale of the said 90 feet so reserved, or any part thereof, but, on the contrary, the land so reserved has always been held as so appropriated for Canal purposes and never otherwise, and if any sale of any part

thereof has been made, such sale has been entirely unauthorized by law, and is therefore void and of none effect, as against your orators rights, as hereinafter set forth."

The brief for the Chicago and Rock Island Railroad states, in part:

"These defendants further state that by the laws of the land no act was required to be done by the Congress of the United States, being the Sovereign Power to declare said forfeiture; on the contrary thereof these defendants state that the Sovereign Power, in order to have title reinvest as forfeiture for breach of condition, are not required to make any entry or claim. These defendants further state that the Sovereign Power of the United States did after forfeiture incurred by a non-compliance with the Act of 1822 order and expose to public sale without any condition, restriction or reservation, except military reservations, all the lands owned by them in the district of country through which the canal as proposed by the Act of 1822 was intended to pass, and also through the district of country through which the present canal passes, excepting and reserving from such sale only the lands selected under the Act of 1827, and that most of the lands so offered for sale have been sold, pursuant to legal authority—without any reservation of the ninety feet, as claimed by said complainants said bill of complaint, and that such lands were sold and paid for by the acre."

"These defendants further answering admit that they know of no act of Congress declaring said forfeiture, but they expressly deny that the said ninety feet has been held as so appropriated and reserved as charged in said bill—on the contrary thereof these Defendants expressly state that in all sales of canal lands made under the authority of the State of Illinois no such reservation has ever been made even of canal lands and, in addition thereto that the State of Illinois has by its Legislature from time to time expressly provided for compensation being made for the damages occasioned by the taking of lands in the construction of said canal, except some reservations made by the present complainants since the property was transferred to them."

"—these Defendants say they have been informed and believe and therefore state, that the sections of land hereinbefore numbered with the even numbers were never owned by the State of Illinois, or by said Board of Trustees, that they never had title or interest in the same, and that they never condemned any part thereof according to law, and that the entry upon the same and the construction of their canal thereon, was without legal authority and a trespass."

**Right of way on the Calumet Feeder:** The following documents deal primarily with the status of right of way on the Calumet Feeder. Certain references therein, however, are applicable to the main canal, particularly as to Section 14, Township 37 North, Range 11 East. A canal survey plat of Section 14, revised to indicate land sales, is shown as exhibit 7.

"Law Offices of  
CAMPBELL & CUSTER  
217 LaSalle St.

Chicago, Illinois, Oct. 9, 1890

William Milne, Esq.

Dear sir:

I was desirous, as I stated to you, of going to Lockport tomorrow to meet the commissioners on account of several matters



pending before them, but I find that I am unable to do so. The Supreme and Appellate Court are both in session and I am occupied in writing briefs for said courts.

As to the Adam matter I do not presume it will be necessary, inasmuch as I mailed you sometime ago a lengthy opinion on that subject.

As to the Calumet feeder I can say this that the persons claiming to own land on both sides of the feeder in Section 14 at its junction with the canal, presented to me abstracts of title showing patents from the Government of all that part of Section 14 which is embraced within the limits of the feeder in that section. I also looked over the abstracts to see what authority had been given to the trustees to take land in that section for a feeder, but I found no reference to such authority. I think, therefore, there is no doubt that the commissioners having abandoned the feeder for so long a time, have lost whatever right they had by reason of possession, to the land embraced in the feeder in section 14. As to the lands embraced in the remainder of the feeder I think that in those sections which originally belonged to the canal, the State still owns them. What the rights of the State are in the other sections, I have no means of determining, and the only way of finding out anything on the subject would be to invoke the assistance of Handy & Co., abstractors. I think it very likely, however, that wherever they acquired, from the owners, any right to use lands for the feeder, such right was dependent upon the continued use by the canal of the lands for that purpose, and if so, when they ceased to be so used the whole title thereto would revert to the owner. As this is very likely the case I doubt whether it would be worth while for the commissioners to expend much money in investigating the subject.

I write this to you in answer to and in explanation of the questions you asked during a recent conversation upon this subject, and it, of course, is also for information of the commissioners.

The owners of the lands in Section 14 are very anxious to know whether or not the commissioners claim any interest in the feeder in that section, and if so, whether they intend to sell the same. I took the liberty of stating that I would advise them that in my opinion they had no interest in the feeder in that section which could be the subject of sale.

Very truly yours,  
(Signed) J. R. Custer"

"Leon McDonald  
Supt. I. & M. Canal

Sir:

I hereby submit the following report in the matter of the canal rights in and to the bed of the old Calumet Feeder and ninety feet on each side thereof. To enable you to follow and locate the references in this report, I enclose a correct map of the Feeder from its mouth to the dam of the Calumet River at Portland, now Blue Island.

Commencing at the mouth of the Feeder where it empties into the I. & M. Canal, the State owns about three-fourths of a mile through Section 14, Township 37, Range 11, by reason of possession and use continuously from 1848 to the present time. The Phoenix Stone Company's quarries are located near a line between Section 14 and 13 of the above mentioned township. Section 13, Township 37, Range 11 and Sections 17, 21, 23 and 13, Township 37, Range 12 were originally canal lands and were sold reserving the Feeder and ninety feet on each side. The Feeder and strip through these odd sections contains

an aggregate of 117.51 acres. For the correct boundary, by survey, of these various strips, reference is hereby made to an unexecuted deed now among the files of the canal records a copy of which is also enclosed. This deed gives the metes and bounds of these strips and was the culmination of an offer of \$10,000 for this property accompanied with a check for \$500.00 forfeit in case of non-fulfillment, etc., by Theodore Luder dated November 9, 1891.

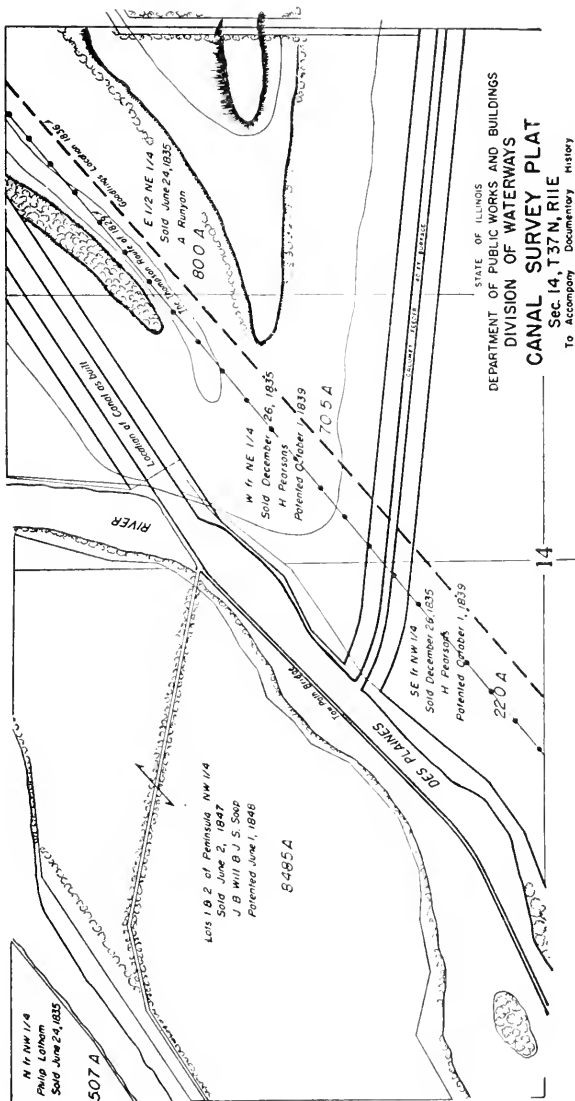
I cannot find any record whatever of the manner in which the State secured title through the even sections lying between the above numbered original canal sections. As a matter of fact, however, they did secure possession and held it continuously until 1874, a period of about twenty-five years. Continuing into Township 37, Range 13, Section 7 was originally canal land but was sold in 1853 without reserving the right of way for the Feeder, etc. The right of way through Section 17 and the East half S. E.  $\frac{1}{4}$  Section 21, S. W.  $\frac{1}{4}$  Section 22, S. W.  $\frac{1}{4}$  Section 26 and N.  $\frac{1}{2}$  Section 27, all in Township 37, Range 13 was secured by deeds of easement, which are among canal records, but these easements were forfeited by the abandonment or discontinuance of use. This, however, is contingent upon the fact that the action in removing the dam at Blue Island operated as an abandonment, etc. The State also secured the right of way through the E.  $\frac{1}{2}$  of Section 36, Township 37, Range 13. This leaves in Township 37, Range 13 that part through which the Feeder extends in Sections 18, 7, 8, 16, N. E.  $\frac{1}{4}$  21 and E.  $\frac{1}{2}$  S. W.  $\frac{1}{4}$  26, N. E.  $\frac{1}{4}$  26, N. E.  $\frac{1}{4}$  35 and W.  $\frac{1}{2}$  of S. W.  $\frac{1}{4}$  Section 26 without any evidence of the right of way having been secured, the title of which, if any exists, resting upon peaceable possession for a period of over 20 years. It may, however, be found that the title to these above mentioned lands was secured in the same manner in which the State secured its title to the even sections along the entire line of I. & M. Canal.

There are 36 separate easements of land lying south of Blue Island extending as far as the Indiana border in Township 36, Ranges 7, 8, 13, 14 and 15, which should be carefully examined as it is not impossible that they contain evidence of title which the State obtained by purchase in a large quantity of land which were overflowed by reason of the construction of the dam at Portland.

I also enclose copy of a list of names of persons relinquishing lands and lands relinquished on the line of the Calumet Feeder and a list of numbers carefully arranged of the sections through which the Feeder passes from its junction with the I. & M. Canal to Section 13, Township 37, Range 14, where the dam was located. I also append the following memorandum:

The Calumet Feeder was surveyed in 1845, the dam at Portland was erected about 1848. An order was issued for its removal April 9, 1874. The distance from the mouth of the Feeder to the Calumet dam 16.75 miles, distance from mouth of Feeder to the mouth of Calumet River 31.51 miles, distance from the mouth of the Feeder to Bridgeport 18.51 miles, distance from the mouth of the Feeder to mouth of Chicago River 23.25 miles, all of which is very respectfully submitted.

/s/ E. W. Willard  
Asst. Clerk  
Canal Board"



STATE OF ILLINOIS  
DEPARTMENT OF PUBLIC WORKS AND BUILDINGS  
DIVISION OF WATERWAYS  
**CANAL SURVEY PLAT**  
Sec. 14, T37N, R11E

To Accompany Documentary History

OF  
**THE ILLINOIS AND MICHIGAN CANAL**  
Exhibit 7



## CHAPTER 12

### CANAL LOCATION AND BOUNDARIES

**History of Canal Surveys:** A considerable volume of information has been previously presented as to the various surveys made relative to location of the canal route. The final location of the canal appears to be a factor in certain phases of litigation, and the history of the location is briefly reviewed herein.

**The Post and Paul Survey of 1824:** Upon passage of the Federal Act of March 30, 1822, the State caused a survey of the route to be made. The engineers employed prepared a map showing a canal route, with variations, and this map and accompanying report were presented to the General Assembly. Neither the engineers, the Canal Commissioners, nor the General Assembly appear to have recommended or adopted the route shown on this map as the definite location of the canal.

**The Thompson Survey of 1829:** The Federal Act of March 2, 1827, provided that the land grant would be adjusted as soon as the route of the canal was located and agreed on by the State. The State Act of January 22, 1829 made it the duty of the Commissioners to select the route of the canal. The Commissioners did not adhere to the route shown by the Post and Paul map. A new survey was made by James Thompson, and the map prepared by Thompson, indicating the route he had selected, was adopted by the Commissioners. This map was transmitted to the General Land Office, and has always been considered by that office as the map of definite location of the canal.

**The Federal Surveys of 1829-1831:** Engineers from the Topographical Bureau of the War Department examined the country and made surveys relative to the canal in the years 1829, 1830, and 1831. A report on this work (appendix 15) was transmitted to Congress, May 24, 1832. These surveys had little or no effect on the final location of the canal.

**The Bucklin Surveys of 1830-1833:** James Bucklin made surveys of routes and estimates of costs for both a canal and a railroad. Bucklin's work seems to have been the first to present a real estimate of the cost of a canal, but does not seem to have been accepted as a definite location.

**The Gooding Survey of 1836:** By Act of January 9, 1836, the General Assembly again provided for the construction of the canal. This law, while less definite in this respect than pre-

vious laws, still leaves the definite canal location to be established. The Board of Canal Commissioners employed William Gooding as Chief Engineer. Under Gooding's direction, in March 1836, examinations were begun of the country through which the canal passes. Subsequent to this examination, the work of definitely locating the canal upon the ground, ready for construction operations, was started. The relationship of previous surveys to this work of definite location is stated by Gooding in his report for 1836 (appendix 35), as follows:

"In making the examinations the present season little or no aid has been derived from the facts collected in previous surveys, as not a single field book of these surveys has been obtained, and only the general results were known which have been presented to the public in the reports. Particular care has, however, been taken the present season to make such notes as will greatly facilitate operations when a definite location shall be required of that part of the line which has not already been revised."

Gooding's report for 1836 shows that during that year part of the line had been finally located and placed under construction. Other parts were more or less finally located, and the location of still other portions considered tentative. The line as finally or tentatively located by Gooding in 1836 is shown on a series of three maps which accompanied his report. From references made thereto in succeeding years, it is apparent that major and minor adjustments in the canal location were made nearly up to the time of completion in 1848.

Exhibit 6 is a drawing showing the principal canal routes considered, and the final "as built" location of the canal.

**The Canal and the Reserve Strips; Act of March 30, 1822:**  
The Federal Act of March 30, 1822 provided in part:

"That the State of Illinois be, and is hereby authorized to survey and mark, through the public lands of the United States, the route of the canal connecting the Illinois River with the southern bend of Lake Michigan; and ninety feet of land on each side of said canal shall be forever reserved from any sale to be made by the United States. . . ."

Whether the above language was intended to mean the reservation of ninety feet on each side of the route of the canal, or ninety feet on either side of the margin of the water in the canal, is not known. Both interpretations have been made. The Committee on Roads and Canals, House of Representatives, Twenty-third Congress, first session (appendix 29), considered that the Act of 1822:

"Empowered the State of Illinois to 'survey and mark the route' of such a canal, and reserving from future sale, vested in that State ninety feet of land on each side of such route as might be approved for that object."

In discussing an opinion rendered on November 15, 1849 by the Attorney General of the United States (5 Op. 179) in relation to the Wabash and Erie Canal, the Commissioner of

the General Land Office, in letter of February 22, 1850 to the Secretary of the Interior, stated that:

"Under the last mentioned Act, the Attorney General on the fifteenth day of November 1849, gave an opinion that the State of Indiana was entitled to five sections of land for each linear mile of the canal, in addition to the one-half of the right of way of one hundred and eighty feet reserved from sale, and the use of it vested in the State, by the Act of 26th of May, 1824."

### **The Canal and the Reserve Strips; Act of January 9, 1836:**

By this Act, the General Assembly of Illinois provided that:

"The said canal shall not be less than forty-five feet wide at the surface, thirty feet at the base and of sufficient depth to insure a navigation of at least four feet, to be suitable for ordinary canal boat navigation, to be supplied with water from Lake Michigan and such other sources as the canal commissioners may think proper, and to be constructed in the manner best calculated to promote the permanent interest of the country; reserving ninety feet on each side to enlarge its capacity, whenever in the opinion of the board of commissioners the public good shall require it."

The State Act of January 9, 1836, in providing that ninety feet on either side of the canal be reserved to enlarge its capacity, does not refer to the Federal Act of March 30, 1822, and it does not appear to be the view of the Canal Commissioners that the reservation ordered was in conformance with this Act. In their annual report for the year 1836 (appendix 36), the Commissioners state:

"It (the canal) is to be constructed, too, in the manner best calculated to promote the permanent interest of the country, and a discretionary reservation is authorized on each margin with a view to future enlargement."

It would appear from the above that such reserves as might be established were discretionary with the Commissioners, and that, where ninety feet were reserved, this distance was to be laid off from the margin, or waters edge, of the canal.

**Dimensions of the Canal:** On May 16, 1839, the Canal Commissioners took the following action:

"Ordered by the Board that the following be the dimensions of the Illinois and Michigan Canal through the Summit or First Division, to wit, not less than thirty-six feet on the bottom, sixty feet on the top water line and six feet deep, except where from the peculiar difficulties of particular situations it shall be deemed expedient by the Acting Commissioner or Chief Engineer to diminish the size, when it shall be subject to further order."

**Establishing the Canal Boundaries:** On July 12, 1845, the Canal Trustees ordered the Chief Engineer to establish the location of the line of demarcation between the canal lands and the abutting lands held in private ownership, and to prepare permanent records:

"The Engineer shall cause a plan of the Canal and the lands immediately adjacent thereto to be made upon a scale of sufficient size to represent clearly the position of the dividing or boundary line of every individual owner upon the line, and

the direction of said boundary line for 20 rods or more and whenever the feeder lines may be determined upon—the same shall be done in reference to them in order that there may be on file at the Canal Office the means of knowing precisely the situation and extent on the line of Canal of all owners of private or individual property as well as of that belonging to the Canal itself.

Whenever it shall become necessary to have the surveys for the feeders made and the line of them traced, the Chief Engineer shall make report to the Resident Trustee and state the number and grade of assistants required for the purpose."

**Locating the Canal Boundaries:** The Chief Engineer assigned the work of establishing the canal boundaries, and the preparation of the record maps and plats, to A. J. Mathewson, a surveyor on the engineering staff. Other than the information contained in the order of the Trustees, the canal records, so far as known, do not indicate what instructions Mathewson received as to locating the boundaries. Mathewson, however, located the boundaries generally ninety feet from the "canal," but these boundary lines are neither ninety feet from the canal route, or center line, nor ninety feet from the canal margin, or waters edge. As laid out, the width of "canal" varies from place to place and the overall distance between the boundary lines varies accordingly. The following examples illustrate, in general, the methods used. It being understood that the boundary lines were located from the "canal" lines.

Where the canal is entirely in excavation, the width of "canal" was taken as the distance between the points where the side slopes of the canal prism intersect the surface of the ground. For example, at a point where the cut is 20 feet, the width of "canal" is the bottom width, or 36 feet, plus slope distances of 80 feet, a total of 116 feet. To this is added 90 feet on each side, making an overall distance between boundary lines of 296 feet.

Where the canal is entirely in embankment, the width of "canal" was taken as the distance between intersections of the canal prism side slopes and the top surfaces of the towpath and berm bank. The canal prism, as adopted by the Commissioners, had a 36 foot bottom and side slopes of two horizontal to one vertical, and this, at design depth, gives a water surface of 60 feet. The embankments were given a freeboard of not less than 3 feet. Under these conditions, the "canal" is 72 feet in width, and the overall distance between boundary lines is 252 feet.

Where the canal is in rock excavation alone, or was constructed with vertical walled banks, the width of "canal" was taken as the distance between these vertical banks, or some 60 feet. Under these conditions, the overall distance between boundary lines is 240 feet.

The above examples are generalized. There appear to be reaches of the canal where no boundary lines other than the "canal" lines were established. There are other variations, as



for example, at widewaters, where the overall distance between boundary lines may be greatly in excess of any distances mentioned above.

**Records of the Canal Survey:** The field work conducted by Mathewson involved taking the canal as he found it constructed upon the ground, establishing the width of "canal," and from the "canal" establishing the boundary, or, as they are generally known, the 90 foot reserve lines. The "canal" lines and boundary lines were then connected to the lines of the public surveys, and the various measurements of courses and distances recorded in field books. From the field notes, Mathewson prepared a series of working drawings covering each section of land through which the canal passes. These drawings are a platting of the field notes, and show the various lines established, the detailed measurements taken, and other data relative to areas, and so forth.

As a final step, a series of record maps or plats were prepared, one plat for each section of land through which the canal passes. These plats were bound in three books, and these books were evidently intended to be the final, or official, record of the canal survey. An examination of these plat books shows that many of these final plats were never completed and are of no value in determining the original specific location of the "canal" lines, or boundary lines. In such cases, it is necessary to refer to the original field notes. It would appear that, for many years, the field notes and other original canal records were in the personal possession of Mathewson, and not retained as official canal records. A dated but unsigned memorandum found among the canal papers illustrates the situation:

"Wednesday, September 28, 1898

I sent James Riley (the Porter) to the House of John Arnold with a request that he come to the canal office, that I wish to see him on business. Mr. Arnold came in response to my request. I stated to him that there were in Mr. A. J. Mathewson's possession a large quantity of records such as maps and other documents which Mr. Mathewson had removed from the canal office at the time he moved his office and which I understood through Mr. Noah Whitty has been removed under permission from Swift, President of the Board of Trustees of the I. & M. Canal. That the canal authorities wished to establish some facts in the matter of lands, one affecting the 90 foot line in Sects. 35, 39, 13 and the other in Section 10—Ottawa Township, LaSalle County which could be established only through the maps and other papers which Mr. Mathewson had taken with him from the Canal Office. Mentioning the maps and field notes of the two sections above mentioned and also a report of the first Board of Commissioners of the I. & M. Canal made in 1825, and the report of Messrs. Rene Paul and Justis Post, engineers of this survey of the proposed route of the canal to connect the waters of the Mississippi River with those of Lake Michigan. Made the survey in 1824. That I was of the opinion that there might be other documents of importance to the Canal or State among these papers in suits now pending. That I was authorized by Supt. McDonald to see him as Mr. Mathewson's representative and see if some arrangement could be made to

secure these documents, maps, etc. Stated they were willing to pay Mr. Mathewson what was right and satisfactory, not wishing at this time to raise a question of ownership or dispute Mr. Mathewson's right to the possession of the property and other documents. Mr. Arnold said he would see Mr. Mathewson in regard to the matter and see what could be done. Mr. Mathewson came to the canal office in about two hours and said that Mr. Arnold had seen him in regard to the maps and documents, etc. That the canal had always paid his bills that he had never been unreasonable in his charges and that he would do anything to help us out that he could. In the course of the conversation he stated to me that he had carried these maps and other papers with him when he had vacated the room in the canal office. That Mr. Swift, President of the Board of Trustees told him to take care of these—that they would be safer with him who had more interest in their preservation than any body else and that the old office was liable to take fire and burn down any time. He also informed me that he surveyed the canal its whole length—that he had the maps of every section from Chicago to the Illinois River, through which the canal passed, unless some had been stolen and that he had all the field notes of these surveys with notations made regarding what he called most important points along the Line. He also said that the Plat Books Nos. 1, 2 and 3 in the Canal Vault were made from these surveys and maps. Surveys were made at about the time of the completion of the canal. I make this record when fresh in my mind because I am of the opinion that these maps, field notes and records now in the possession of Mr. Mathewson are the property of the I. & M. Canal and are invaluable records which should be secured and preserved by the Canal Board as part of the early history of this great work and of the sections through which the canal passes and also should be restored to among the canal records because in the event of Mr. Mathewson's death which cannot in the natural course of events be long deferred. These records if held as his private papers would lose very much if not nearly all of their value—if restored as a part of the canal records certified copies would evidence in any court of competent jurisdiction of the truths which they set forth."

"10/2/98—Mr. Mathewson says that he made a survey of the canal by division in 1847 under order from Swift, President of the Board of Trustees to establish the 90 foot lines—that he finished first or Summit Division to south line of Lockport about August 1st of that year. That in surveying through section 16 Mr. Swift directed him not to take in only so much as was used for canal use so as not to do an injustice to individual rights as that was a school section and belonged to the State."

It would appear that, shortly after the above memorandum was written, Mathewson returned some, if not all, of the field notes, documents, and records he had taken from the canal offices. The field notes are of the first importance and these, except for a few sections, are now among the canal records.

**Status of the Canal Survey:** The purpose of the canal survey, as ordered by the Trustees, was to establish and record the boundary lines between the lands considered to be canal property, and the lands considered to be privately owned. As previously shown, these boundary lines were, in general, neither laid off ninety feet from the canal route, or center line, nor ninety

feet from the canal margin, or waters edge. There are strong indications, however, that, subsequent to the canal survey, the Trustees, and later the Commissioners, did not consider the boundary lines established by Mathewson to necessarily demarcate the canal lands and private ownership. The opinions of the attorney for the Trustees were expressed in the following letter, which, while undated, is believed to have been written about 1850:

"William Gooding, Esq.  
Lockport

Dear Sir:

I answer your letter of July 19, briefly and directly as follows. I do not suppose you care about the reasons and do not give them, on some of the points there may be some doubt, where I have given an answer adverse to the Trustees, I am clear about the law. In all cases where I thought there was some reasonable doubt I have answered so as to protect the rights of Trustees: the answers I have given would govern me if I were acting as one of your Board, I suppose most of these claims are obsolete or speculative. To the following questions I give the following answers:

1st. Are the Trustees liable for any claim for damages where the canal was wholly constructed by the former Canal Commissioners and the claim is simply for damages caused by the construction and not the use of the canal or for right of way.

Answer. No. For such claims proceedings must be had against the State Trustee alone.

2nd. Had the Trustees a right to occupy the necessary ground for the canal through all the even or government sections without paying therefor.

Answer. Yes, unless sold prior to location of canal in such case there is doubt whether purchase was not subject to right to locate.

3d. Have the Trustees a right to occupy and use for canal purposes a strip of land 90 feet wide on each side of the canal, through all sections as above described, without paying damages for the same.

Answer. Yes.

4th. In case where land has been damaged by leakage from the canal since it was completed and in use are the Trustees liable for the said damages if the canal has been constructed in the usual manner and the leakage is caused mainly by the imperfection of the material.

Answer. Yes, probably, but see copy of instructions given by Judge D. in ..... case for full exposition of law on this point.

5th. Where the canal has been constructed extra width, say 200 feet instead of 60 feet because it was cheaper so to construct, are the Trustees liable for the extra land occupied in forming this extra width.

Answer. Yes, outside of 90 feet on each side.

6th. When a farm has been divided by the canal so as to make a part of it inaccessible to the owner except with much additional travel are the Trustees liable for the damage caused.

Answer. Only in case where land was sold before location of the canal. In that case it is doubtful whether the purchase was not subject to right to locate canal.

7th. Have we a right in estimating damages to consider the advantage conferred as well as the damage done and strike the balance.

Answer. Yes, and such is clearly your duty in my opinion.

All of which is respectfully submitted

I. N. Arnold"

From the above document, it is seen that Attorney Arnold is advising the Trustees that they have a right to occupy and use lands in the even-numbered sections, but that this right is limited to the breadth of the canal, or 60 feet plus 90 feet on either side, or an overall total between boundary lines of 240 feet. Mr. Arnold does not state his reasons for this view, but presumably they were those expressed in *Board of Trustees of Illinois and Michigan Canal v. The Chicago and Rock Island R.R. Co.*, as Mr. Arnold was the attorney for the Trustees in that litigation.

"April 1, 1882

Honorable Martin Kingman  
(Canal Commissioner)  
Peoria,

Dear Sir:

Enclosed find weekly and monthly statements of tolls due from this office today, also statement of receipts from spoilbank stone during March, I remit to bank today. What conclusion did Mr. Foster come to in regard to the stone he wanted.

Answering yours of 31st, my understanding is that the canal is 60 feet wide, and we have 90 ft. strip on each side. Where the canal is of extra width the waters edge on towpath side is the starting point measure off 90 ft. on that side, then 60 and 90 feet. Suppose the canal to be 150 feet wide we would then only control the bank on berm side.

In some cases where the U. S. sold land through where the canal passes prior to the grant to the canal, I do not understand that we have '90 ft. strip', these cases are few however.

In some places (Lockport and Ottawa for instance) the canal authorities in laying out canal lots have laid them out right up to the berm bank making no reserve of '90 ft. strip'. I do not understand by what authority this was done, but that it was done is an evident fact.

As long as they propose to give the canal to the U. S. under certain conditions, I think it would have been as well to have said 'all the remaining canal property' without specifying what it was.

Respectfully,

Wm. Milne  
Chief Clerk"

"Chicago, Mar. 6, 1882

To the Commissioners of the  
Illinois and Michigan Canal  
Lockport, Illinois

Gentlemen:

Will you kindly inform me what width of ground is taken for the Canal in Sec. 8, T. 38, Range 13 East of the 3rd prin. meridian, in the town of Lyons, Cook County.

Is there a 'reserved strip' of 90 ft. wide on each side of the Canal proper? And what is the center line, or what are the exterior lines of the total tract taken for Canal uses?

I am surveying the land adjacent to the Canal in that section, and desire the boundaries for that purpose.

Respectfully,  
(signed) Samuel Greely"

"March 8, 1882

Samuel S. Greely,  
Chicago

Dear Sir:

Answering yours of 6th would say that the Canal has a strip 240 feet in width in the section you mention, sixty feet of canal and ninety feet on either side.

The starting point is the water line on the towpath side, measure 60 feet for canal then 90 feet. In places where the canal is more than 60 feet in width of course there is so much less than 90 feet on the berm side.

Respectfully,  
(signed) Wm. Milne"

The plat of the canal survey for this section shows the "canal" as some 107 feet in width and the overall distance between boundary lines as some 287 feet.

"Maroa, Illinois  
January 17, 1888

Canal Commissioners  
Lockport, Illinois

Dear Sir:

Will you please inform me of the width of the Illinois and Michigan Canal where it runs across the North West quarter of section 26—Twn. 33, Range 5 in LaSalle County. The width of the canal and also of the right of way each side of the canal. Also does a party who owns a farm in which the canal runs through have the use of the right of way for farming purposes without payment. Please answer the above questions and if any charges I will remit.

Yours truly,  
C. F. Emery"

"Jan. 19th, 1888

C. F. Emery, Esq.  
Maroa, Ills.

Dear Sir:

Yours of the 17th inst. is duly received. Answering the same, the canal right of way is 240 feet in width, 60 feet for canal and 90 ft. on each side; it is so shown in plat book here for the land you speak of, viz: N.W.  $\frac{1}{4}$ , Sec. 26, T33, R5. It has been the custom to allow the owners of land adjoining the canal to place their fences within a reasonable distance of the canal bank and to use that portion of the reserved '90 ft. strip' enclosed as part of their farms without charge; this does not include the right to cut any brush or timber, or to remove any material from the canal lands, and the fence is subject to removal at any time when the ground is wanted for canal purposes.

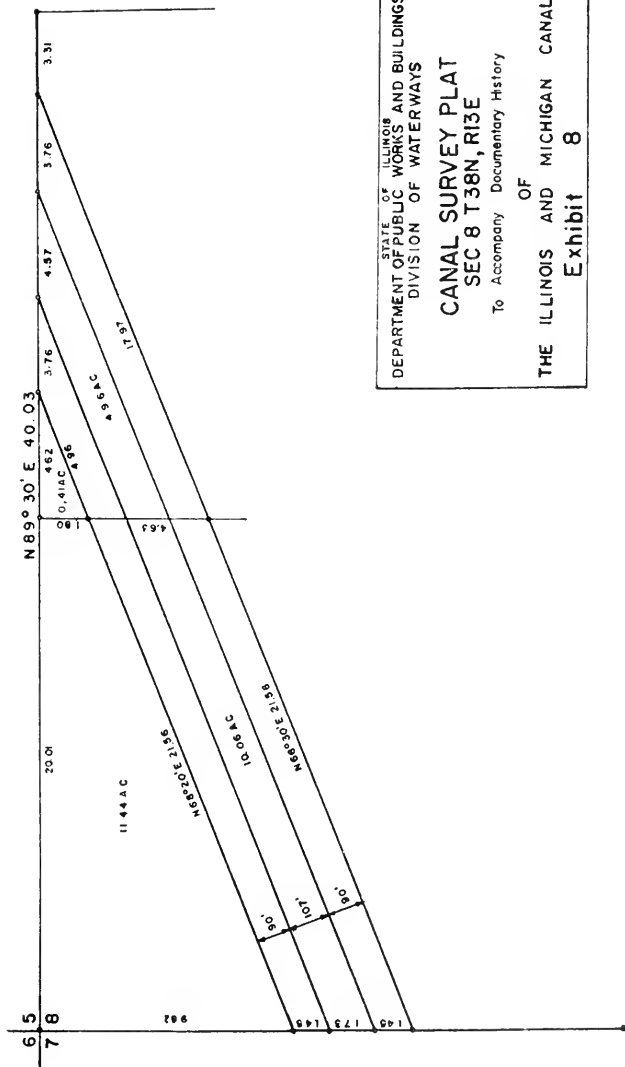
Respectfully yours,"

The plat of the canal survey for this section does not carry dimensions as stated above. The field notes show the "canal" to be some 72 feet in width, and the overall distance between boundary lines to be some 252 feet.

As stated in the above letter of January 19, 1888 to C. F. Emery, it was the custom to allow adjacent landowners the use,

in part, of the so-called reserve strips. "The Rules, Bylaws and Regulations of the Illinois and Michigan Canal," adopted by the Trustees on April 26, 1848, provided as follows:

"Sec. 133. Where the canal is composed, either wholly or in part, of embankment, no fence shall be placed on any part of the embankment. Where the canal is composed, either wholly or in part, of excavation, no fence shall be placed within fifteen feet of the front edge of the towing path, nor within ten feet of the front edge of the berm banks; provided, that where the canal shall be of extra width, the general superintendent, may, at his discretion, permit such deviations from the foregoing regulations as he may deem proper, so far as the construction of fences on the berm side of the canal is concerned."



STATE OF ILLINOIS  
 DEPARTMENT OF PUBLIC WORKS AND BUILDINGS  
 DIVISION OF WATERWAYS

CANAL SURVEY PLAT  
 SEC 8 T38N, R13E

To Accompany Documentary History

OF  
 THE ILLINOIS AND MICHIGAN CANAL

Exhibit 8





## CHAPTER 13

### STATUS OF THE FEEDER CANALS

**The Feeder Canals:** The State, as a part of the canal system, constructed several navigable feeders. The Calumet Feeder was 16.8 miles in length; the Kankakee Feeder, 4.5 miles; and the Fox Feeder, 4.5 miles. These feeders were designed and constructed to contain a water prism of 26 foot bottom, 40 foot surface, and 4 foot depth. The status of ownership of the lands over which these feeders pass may be on a different basis than the main canal. While no official rulings on the status of the feeders of the Illinois and Michigan Canal are known to have been made, the situation seems quite comparable with the status of feeders on the Wabash and Erie Canal in Indiana. It will be seen from inspection of exhibits 2 and 3 that the feeder canals are not shown on either the Post and Paul Map of 1824 or the Thompson Map of 1829.

**The Opinion of the Attorney General of the United States:** The State of Indiana claimed that the Acts of May 26, 1824 and March 2, 1827, relative to the Wabash and Erie Canal, applied to navigable feeders, and that they were a part of the canal. The Attorney General of the United States, in an 1849 opinion (appendix 64), held that navigable feeders were a part of the canal and hence were covered by the provisions of the above Acts of Congress.

**The Views of the General Land Office:** The General Land Office ruled (exhibit 5) that there were no navigable feeders on the Wabash and Erie Canal within the meaning of the term as used by the Attorney General. Presumably, the same situation applies to the feeders of the Illinois and Michigan Canal. It will be noted that no part of the length of the feeders was included in determining the total length of the canal for the purpose of computing the total quantum of the lands granted by the Act of March 2, 1827.

**Position of the Canal Commissioners and Trustees:** The nature of the authority by which a right of way for the feeders was obtained in the even-numbered sections is not clear. Such information as is available on this matter was presented in Chapter 11. For the Calumet Feeder, which was constructed under the Trusteeship, releases of rights of way for some of the lands were secured, as shown in detail by the annual report of the Canal Commissioners for the year 1900. One form of release of right of way on the Calumet Feeder is as follows:

"Whereas, the Board of Trustees of the Illinois & Michigan Canal contemplate constructing a Feeder from the Illinois &

Michigan Canal, from the Calumet River to the main trunk of the said Canal—NOW KNOW YE that we James Hollingshead Rees and Harriet Frances his wife, of the City of Chicago in the County of Cook of the State of Illinois being desirous for the construction of the said Feeder, in consideration of the premises and of one dollar to us in hand paid by the Board of Trustees of the Illinois & Michigan Canal, the receipt of which is hereby acknowledged, have and by these presents do give, grant, bargain, sell remise, release, convey and quit-claim to the said Board of Trustees of the Illinois & Michigan Canal, the right of way for the said Feeder over and through the following described tract, piece or parcel of Land, viz: The East half of the West half of the North East quarter of Section Seventeen in Township Thirty Seven North of Range Thirteen East and also such number of feet in width of land from the centre of said Feeder on the towpath side thereof, and such number of feet in width from the said centre on the berm side thereof, extending the whole length of said Feeder through the said above-described premises, as may be necessary. The land to be taken on each side of said feeder shall be no more than is essential to the proper construction of the said feeder, including what may be necessarily overflowed. The place of construction to be determined by the Trustees, or the Chief Engineer in their employ.

*TO HAVE* and *TO HOLD* the said right of way, and the said land as above described on each side of the said Feeder as aforesaid, with the appurtenances, unto the said Board of Trustees of the Illinois & Michigan Canal, and to their successors and assigns, for the use, construction, navigation, preservation, occupation and enjoyment of the said Feeder forever: *PROVIDED*, however, if the said Feeder should not be constructed over and through the said premises or, if after the construction of the same it should be, by the decision of the said Board of Trustees, their successors or assigns, abandoned and discontinued, or the route thereof changed so as not be continued over the said premises, then, and in that case, the said Land hereby granted shall revert to the said James H. Rees his heirs or assigns.

In witness whereof, the said James H. Rees and Harriet Frances, his wife, have hereunto set our hands and seal this ninth day of January A.D. 1846.

Sealed, Signed, and Delivered

IN PRESENCE OF  
Geo. Davis

James H. Rees  
Harriet Frances Rees"

**Present Status of Titles on the Feeder Canals:** If the position held by the General Land Office that the feeders are not a part of the canal is correct, it follows that land titles on the feeders are not involved in the various contentions arising from the applicability or interpretation of the Federal Acts of 1822 and 1827.

## CHAPTER 14

### MISCELLANEOUS LEGISLATION

**Completion of Canal on the Deep Cut Plan:** The Chicago River, flowing into Lake Michigan, had always served as an outlet for Chicago sewage. As a means of purifying or cleansing the river, the city proposed to complete the canal on the original "deep cut" plan, thus taking water from the river and lake and diverting the sewage to the Illinois River. By Act approved February 16, 1865 (appendix 52), the General Assembly authorized the City of Chicago to carry out the work. The work of thus deepening the summit level was begun in December 1865 and continued until July 1871, when it was completed. The average vertical cut was about eight feet, or to about six feet below low water datum of Lake Michigan. The costs expended by the city were made a vested lien upon the canal and its revenues after the payment of the existing canal debt. By Act approved and in force October 20, 1871, the General Assembly directly reimbursed the city for the cost of the work done and dissolved the lien on the canal revenues.

**Federal Study for Improved Navigation:** By Act of March 2, 1867, the Congress authorized the Secretary of War to report on a system of navigation, by way of Illinois River, between the Mississippi and Lake Michigan, adapted to military, naval, and commercial purposes. A Board, consisting of General Jas. H. Wilson and William Gooding, was appointed to make the required surveys and reports. The Board reported to the Chief of Engineers on December 17, 1867.

The reports of this Board (appendix 53) contain valuable information on the history and status of the Illinois and Michigan Canal. The proposed plan of improvement and its relation to the canal is summarized as follows:

"By a careful examination of the report and profiles of this year's survey, with the map herewith submitted, it will be seen that the location of the present canal from Bridgeport to the valley of the Des Plaines cannot be advantageously or economically changed; that it is the best, cheapest, and most direct route which can be found, there having been more than enough work already done in this line to counterbalance the natural but not superior advantages of the slightly lower but more tortuous route by the way of Mud Lake; that the Calumet river and Saganaska creek route, along what is known as the Calumet feeder, would cost a great deal more than either of the others, being longer and ending at a point where there is neither a natural nor artificial harbor, and where it would be impossible to construct one which would answer the purposes of commerce and the national defense; and, finally, that it is not practicable at any cost to use any part of the Kankakee river as a part of the system of navigation in question. For the foregoing reasons,

after a careful consideration of all the facts upon which they rest—a full analysis of which will be given hereinafter—we are decidedly of the opinion that in constructing such a system of navigation as the interests of the country require, the government must follow the general line of Illinois and Michigan canal and the Illinois River. When it is considered that the summit of the Fox and Wisconsin river line is 315 feet, and that of the Lake Winnebago and Rock river is 285 feet above the level of Lake Michigan, it will be seen that the line recommended by us is the only feasible route for deep-water communication between the great lakes and the Mississippi river, equally adapted to military, naval, and commercial purposes.

#### Plan of Improvement

"We have therefore to respectfully recommend that the Improvement in question shall be made by widening and deepening the present canal from Bridgeport to the head of Lake Joliet, with the exception of a section of 11- $\frac{1}{4}$  miles between Summit and 'the Sag', where it will be cheaper to excavate an independent canal. From Lake Joliet to Marseilles the line should follow the bed of the river, the necessary depth being secured by a system of locks and dams. At Marseilles it will be necessary to construct a piece of independent canal in order to pass the Grand Rapids of the Illinois—striking the river again at or above Ottawa, as may be found most economical. From the latter point to the mouth of the river, the necessary navigation should be secured by a system of dams and locks. It is also recommended that all the canal on this line shall have a width of not less than 160 feet and a navigable depth of six feet, corresponding to the lowest known level of the water in Lake Michigan, an average depth of between seven and eight feet; that the present summit shall be cut down so as to secure this depth in the canal from the inexhaustible reservoir of Lake Michigan. The locks in this improvement, in order to admit of their fullest use by naval and commercial vessels, should be 356 feet long between the gates, 75 feet wide in the chamber, and give a minimum draught of seven feet. The slack water of the Illinois should be made so as to secure a navigable depth of seven feet at the lowest known stages of water. The whole to be constructed in a durable and substantial manner, without display or ornament, but with the single object in view of securing the greatest amount of utility at the least practicable cost."

From the above, it is seen that this Board, in 1867, recommended that if the navigation provided by the canal be enlarged in size, 11 of the 33 miles between Bridgeport and Joliet be abandoned and replaced by an independent canal. The entire canal below Joliet would be abandoned, except for a short reach from Marseilles to or above Ottawa, and replaced by canalization of the Illinois River.

**Acquisition of the Illinois and Michigan Canal by the United States:** In the eighteen-eighties, a proposal for the construction of a canal connecting the Illinois River at Hennepin with the Mississippi River near Rock Island was advanced. It was further proposed that the United States take over and improve the Illinois and Michigan Canal. In 1879, by Joint Resolution, the General Assembly created a Committee of House and Senate to consider whether a cession of the canal to the United States

was advisable and, if so, what legislation was necessary. By Act approved April 28, 1882 (appendix 54), the General Assembly provided for ceding the canal to the United States on certain conditions, providing that such act was approved by general referendum.

The Rivers and Harbors Act of August 5, 1886 authorized the Secretary of War to appoint a Board of Engineers to examine in all their relations to commerce the Illinois and Michigan Canal, and the proposed Hennepin Canal, and to report on the acquisition and improvement of the Illinois and Michigan Canal. On January 10, 1887, the Secretary of War transmitted the reports of this Board to the Congress. These reports (appendix 55) contain much information as to the status of the canal.

The Board of Engineers recommended that the United States not accept the cession of the Illinois and Michigan Canal. Three reasons were assigned:

- “(a) The canal should not be enlarged upon the whole of the present line; on the contrary it would be judicious to abandon the greater portion of it.
- (b) The act does not provide for the cession to the United States of that portion of the Illinois River improvement now owned by the State of Illinois and which forms an essential part of the through line.
- (c) The act is not sufficiently definite as to the obligations which the United States would assume in accepting the transfer of the canal.”

In connection with item (c) above the Board further said:

“It will be observed that this act of cession is coupled with the condition that the United States shall enlarge and maintain the present canal, but is silent concerning the obligations resting upon the canal and which will continue to attach thereto under whatever ownership it may pass.

The Board has made some effort to ascertain what these are, as well as the status of the right of way over certain portions of the line occupied by the canal, but without success, nor did the time within which this report must be submitted permit a full investigation of the matter, even if the requisite expert knowledge were at the disposal of the Board.”

From a consideration of the reports of the Board of Engineers above quoted, it is clear that in the opinion of the Board, if the navigation between the Illinois River and the Lake were to be improved for vessels of larger capacity, by the United States, the retention of any substantial part of the existing route of the Illinois and Michigan Canal was most improbable.



## CHAPTER 15

### REVIEW OF LITIGATION

**The Present Status of Canal Titles:** The authority under which this documented history is made requires a consideration of problems relating to the sale or disposal of the remaining canal lands and property. This poses the question as to what lands the State owns and to which it can convey a clear title. In general, the canal lands to which the State now has or claims title consist of the bed of the canal and the so-called 90 foot reserve strips along the length of the canal west of Bridgeport. From a consideration of the litigation regarding titles, it would appear that question has been raised at one time or another as to ownership of various parts of the canal lands, but particularly as to lands in the even-numbered sections. The parties at interest appear to be the United States Government, the State of Illinois, and the abutting property owners.

**The Leading Court Decisions:** The status of titles to the canal bed and the so-called reserve strips, insofar as the high courts have ruled upon it, may be seen from the following abstracts, or full opinions, in the ruling cases.

**City of Chicago v. Mary McGraw (75 Ill. 566) 1874 (In Part):** Mr. Justice Scholfield delivered the opinion of the Court:

"This was trespass by the plaintiff in the court below, and now appellee, against the defendant in that court, and now appellant, for injuries done to her property, under the direction of the defendant, in excavating, widening and deepening the Illinois and Michigan canal, at Canal Port, in Cook county. There was evidence on the trial that the title to the property claimed to have been injured was originally in the name of the plaintiff's husband, John McGraw; that he and she joined in a deed, and conveyed it to their son, Peter J. McGraw, on the 18th of April 1859, and Peter J. McGraw afterward, and on the 31st day of March, 1863, reconveyed the property to the plaintiff. The plaintiff's husband, at the time the alleged injuries were committed, and at the time of the trial, was still alive, residing with her, and their marital relations had never been dissolved. It is insisted that he was, therefore, a necessary party to the suit; that the plaintiff did not acquire the property in good faith from a person other than her husband, and consequently cannot claim it as her sole and separate property, under the act of February 21, 1861, relating to the separate property of married women."

"It is finally insisted that a strip of land 90 feet wide, on each side of the line of the canal, was dedicated by the United States, before any of the lands were put in market for sale, to the use of the State for transacting the canal business; that this dedication was accepted by the State, and that the proof shows that it was taken possession of by the State, and that the plaintiff's property is within this strip of 90 feet. To sup-

port this, the counsel for the defendant refer to the act of congress of March 30, 1822. So much of that act as is supposed to bear upon the question is as follows: 'That the State of Illinois be and is hereby authorized to survey and mark through the public lands of the United States, the route of the canal connecting the Illinois river with the southern bend of Lake Michigan; and 90 feet of land on each side of said canal shall be forever reserved from any sale to be made by the United States, except in cases hereinafter provided for, and the use thereof forever shall be and the same is hereby vested in said State for a canal, and for no other purpose whatever; on condition, however, that if said State does not survey and direct, by law, said canal to be opened and return a complete map thereof to the treasury department, within three years from and after the passing of this act; or, if the said canal be not completed, suitably for navigation, within twelve years thereafter; or, if said ground shall ever cease to be occupied by and used for a canal suitable for navigation, the reservation and grant hereby made shall be void and of none effect," etc.

"There is no evidence whatever, in the record before us, that these conditions were complied with by the State, and it is incumbent on the defendant, in order to avail of the reservation and grant, as against the possession of the plaintiff, to show that the conditions were complied with, because this is made indispensable by the act of Congress to the vesting of the rights conferred in the State. On the contrary, the general assembly, at its session in 1826, memorialized congress for a grant of lands to aid in the construction of a canal, not, however, connecting the Illinois river with the *southern bend of Lake Michigan*, as required by this act of congress, but uniting the waters of Lake Michigan with the Illinois River. And congress, by another act, approved March 2, 1827, granted to the State, for the purpose of aiding it in opening a canal, 'to unite the waters of the Illinois river with those of Lake Michigan, a quantity of land equal to one-half of five sections in width, on each side of said canal, and reserving each alternate section to the United States, to be selected by the commissioner of the land office', etc.

Subsequently, the general assembly, by an act approved January 22, 1829, created 'the board of commissioners of the Illinois and Michigan canal', and invested it with power to consider, devise and adopt such measures as might be required to facilitate and effect the communication, by means of a canal and locks, between the navigable waters of Illinois river and Lake Michigan. And among other duties enjoined on it was that of selecting, or causing to be selected, as soon as practicable, in conjunction with such commissioners as should be appointed by the commissioner of the general land office, under the direction of the President of the United States, the alternate sections of land granted to the State, by the act of Congress last referred to; and it is not claimed, or pretended, that the Illinois and Michigan canal, as located and constructed by this board, and its successor, has, for one of its termini, the southern bend of Lake Michigan.

The act of congress of March 2, 1827, does not purport to be an amendment of the act of March 30, 1822, nor does it, even by inference, refer to it. In our opinion, these acts constitute distinct and independent offers, by the government of the United States, of aid to the State in the construction of canals, and the latter one having been accepted, without reference to the terms and conditions of the former, the State is only entitled to the grant which it conveys."



**Werling v. Ingersoll (182 Ill. 25) 1899 (In Full):** This case is controlled by the decision in *City of Chicago v. McGraw* (75 Ill. 566), which holds that the State of Illinois is not the owner of the strip of land ninety feet wide along and contiguous to the south margin of the Illinois and Michigan canal through section 10.

"Per Curiam: This is an action of trespass, instituted in the circuit court of LaSalle county by Emily E. Ingersoll and George Ingersoll, appellees, against Frank X. Werling and Eugene Smith, appellants, to recover damages for removing the fences and entering the close of appellees.

The declaration consists of one count. It alleges, in substance, that the defendant, (appellants), with force and arms, on, to-wit, the thirteenth day of November, 1897, and on divers other days, broke and entered certain closes of the plaintiffs, (appellees), situate in the county of LaSalle, and then and there removed and destroyed, to-wit, one hundred and fifty rods of fence, of the value of \$1000, and other wrongs then and there did against the peace of the People, etc., and to the damage of the plaintiffs of \$1000. To this declaration no formal pleas were filed. By stipulation all questions of pleading are waived, and it is agreed that any and all evidence competent to establish a cause of action or a defense shall be treated in the same manner, and be given the same force and effect, as though all proper pleas had been filed and properly pleaded.

Under the stipulation the issues in this case are limited, and confined to a single question, viz.: Is the State of Illinois the owner of a strip of land ninety feet in width along and contiguous to the south Margin of the Illinois and Michigan canal, through section 10? If the State is the owner of this ninety-foot strip, it is stipulated and agreed that this suit cannot be maintained. If the State is not the owner of this ninety-foot strip, it is stipulated and agreed that appellants were guilty of a trespass.

A jury was waived and the case was submitted to the court for trial without a jury. The findings of the court below were in favor of the appellees, and judgment was rendered in their favor against appellants. The present appeal is prosecuted from such judgment.

In *City of Chicago v. McGraw* (75 Ill. 566) this court decided that the State is not the owner of the strip in question, ninety feet wide. We refer to that case for the reasons given in support of the conclusion so reached. It is unnecessary to repeat those reasons here."

**Werling v. Ingersoll (181 U.S. 131) 1901 (In Full):** After the decision of the Supreme Court of Illinois in *Werling v. Ingersoll* (182 Ill. 25), the Canal Commissioners took the case on error to the Supreme Court of the United States. This case, decided in 1901, reflects the present status of title to part of the canal lands as determined by the highest court. The opinion is given here in full:

"Werling v. Ingersoll  
Error to the Supreme Court of the State of Illinois  
No. 168 Argued and submitted March 6, 1901  
Decided April 15, 1901

When Congress, under the act of March 2, 1827, granted to the State of Illinois alternate sections of land throughout the

whole length of the public domain, in aid of the construction of a canal to connect the waters of the Illinois River with those of Lake Michigan, it also granted by implication the right of way through reserved sections; but this implication would not extend to ninety feet on each side.

The State of Illinois never took title to a strip of land ninety feet wide on each side of the route of that canal through the public lands, so far as related to the sections reserved to the United States by the act of March 2, 1827.

The State, in constructing the canal, proceeded under that act, filed its map thereunder, and constructed the canal with reference thereto.

The plaintiffs in error have brought this case here to review the final judgment of the Supreme Court of the State of Illinois affirming the judgment of the circuit court of LaSalle county in favor of the defendants in error (plaintiffs below) in an action of trespass involving the title to lands in that county on the south side of the Illinois and Michigan Canal. The action was brought for the purpose of testing the title and was tried by the court upon an agreed statement of facts, a jury being waived. It appears from this statement that the plaintiffs in error are the agents of the State of Illinois and acted as such in taking down and removing the fence herein-after spoken of. The Illinois and Michigan Canal is owned by the State of Illinois and runs in a direction northeast and southwest through section 10, township 33 north, range 3 east, in LaSalle County, Illinois. The lands in question are in this section, which was one of the sections of land reserved to the United States under the act of Congress approved March 2, 1827, hereinafter mentioned.

The plaintiffs in error claim that the State of Illinois owns a strip of land through that section on the south side of the canal, ninety feet in width, contiguous to such south side. The defendants in error claim that the land which is owned by the State south of the canal is bounded on the south by a line seventeen instead of ninety feet south of the canal line; or in other words, they claim that the north line of their land runs up to within seventeen feet of the south side of the canal. The ownership of the land between these points from seventeen to ninety feet south of the canal is disputed, the plaintiffs in error claiming it for the State and the defendants in error claiming it for Mrs. Ingersoll, one of the defendants in error, who has had possession of the land for more than twenty years, prior to November, 1897, and had prior to that time erected a fence on the line she claimed as her north line. This seventeen feet strip it would seem has been occupied by the tow path.

In order to test the question of title the plaintiffs in error, acting for the State, removed this fence, and thereupon the defendants in error sued them in trespass, claiming the fence was on their line and was their property. The question depends upon the construction of two acts of Congress in connection with the action of the State authorities in relation thereto. They are (1) the act of March 30, 1822, chapter 14; and (2) the act of March 2, 1827, chapter 51. They are, so far as is material, set forth in the margin.

The plaintiffs in error claim that the title to the strip of land ninety feet wide through section 10 passed to the State by virtue of the act of 1822, while the defendants in error claim that the act of 1827 takes the place of the act of 1822, as to the grant of lands, and that under the act of 1827 every alternate section of the land along the line of the canal was reserved

to the United States, and it is agreed that section 10 was among the sections so reserved.

After the passage of the act of Congress of 1822 the General Assembly of the State of Illinois on February 14, 1823, passed an act in which provision was made for the appointment of a board of commissioners to consider, devise and adopt such measures as might be requisite to effect a connection by a canal and locks between the navigable waters of Illinois River and Lake Michigan. It was made the duty of these Commissioners to cause that part of the territory of the State which may lie open or contiguous to the probable courses and ranges of the canal to be explored and examined for the purpose of fixing and determining the most proper and eligible route for the same, and to cause all necessary surveys, etc., to be made, and to make calculations and estimates of the cost, and to make a plain and comprehensive report of all their proceedings under the act to the General Assembly of the State at the commencement of the next session.

On January 18, 1825, the General Assembly of the State amended a prior act, and appropriated about two thousand dollars for the payment of the actual expenditures made and liabilities incurred by the canal commissioners appointed under the act of 1823. On January 17, 1825, the General Assembly incorporated the Illinois and Michigan Canal Company, and provided that the officers should obtain subscriptions to the stock, which should amount to a million dollars, and in a convenient time thereafter, and after ten per centum of the capital stock should have been paid in, the commissioners should proceed to construct a canal to connect the waters of the Illinois River and Lake Michigan, and the corporation was directed to proceed as rapidly to the completion of that object as might be deemed practicable and expedient, having in view the ultimate permanency of the work and the facility and safety of the communications. The size of the canal which the State had in contemplation is shown by reference to the fifth section of the act, wherein it is provided that the canal shall be of a width of forty feet at the summit, twenty-eight at the bottom, and of sufficient depth to contain water at least four feet deep. There is nothing in the record to show that these dimensions were ever altered, although the act was repealed the next year, January 20, 1826.

In the preamble of the repealing act it was stated that the corporation had not performed any act by which the right of the General Assembly to repeal its charter could be taken away, and it was stated that it was believed that the highly important object of the act referred to could be promoted with greater advantage to the public by having the contemplated canal constructed under the direction of the State, and therefore the act of incorporation was repealed.

The Governor of the State was directed by the second section of the repealing act to endeavor to ascertain the best terms on which loans could be obtained on behalf of the State for the purpose of constructing the canal and to report the same to the General Assembly at its next session.

Pursuant to such direction, and on December 5, 1826, the Governor reported that capitalists were reluctant to commit themselves to any specific terms on which they would be willing to make a loan, but from the best information which he had received it was confidently believed that if Congress would make a liberal grant of land there would be no difficulty on the part of the State in obtaining a loan at six per centum, and the Governor suggested the propriety of adopting measures at that

session to commence the work, predicated upon a liberal grant of land by Congress, which it was expected that body would make. The General Assembly at the same session adopted a memorial to Congress, in which it asked for a grant of land belonging to the United States for the purpose of aiding the construction of the canal, and in this memorial the following language was used:

"Your memorialists have caused the route to be explored and estimates to be made of the probable expense of the work; from which it appears that the cost of constructing the canal will not be less than \$600,000, and may possibly amount to \$700,000. To the end, therefore, that your memorialists may be enabled to commence and complete this great and useful work we pray your honorable body to grant to this State the respective townships of land through which the contemplated canal may pass, the avails of which to be appropriated exclusively to the construction of said canal upon such terms and conditions as to your honorable body may seem proper."

Congress on March 2, 1827, passed the act already set forth. On January 22, 1829, the General Assembly passed an act providing for the construction of the Illinois and Michigan Canal, and for the appointment of commissioners to effect that object. By the fifth section the canal commissioners were directed to cause "those parts of the territory of this State which is upon or contiguous to the probable course or range of said canal to be explored and examined for the purpose of fixing and determining the most popular and eligible route for the same: . . . . and as soon thereafter as they may be able to command sufficient funds and deem it expedient, shall commence the work of opening a canal, and constructing locks, aqueducts and dams and embankments, to effect a navigable communication between Lake Michigan and the Illinois River."

By the sixth section the canal commissioners were directed as soon as practicable, and in conjunction with the authorities of the Government, to select alternate sections of land granted to the State by the act of Congress of 1827, and when the selection was made it was provided by section seven that the commissioners should proceed to sell the lands thus selected and to make return of the proceeds of such sale to the auditor of public accounts.

On September 23, 1829, the canal commissioners obtained from the Secretary of State of the State of Illinois a map of the proposed route of the canal which had been made by J. Post and R. Paul, in the years 1823 and 1824, when proceeding under the act of Congress of 1822 and the state statute of 1823. This map was obtained for the purpose of using the same in aid of their work of examining and locating the canal route from Lake Michigan to the Illinois River, but the duty of determining and adopting a route rested with the commissioners appointed under this state act of 1829, no route having up to that time been adopted.

During the years 1823 and 1824 the State through its above named engineers, Post and Paul, had surveyed and marked through the public lands of the United States the route of the canal "connecting the Illinois River with the *southern bend of Lake Michigan*," though it did not return a map thereof to the Treasury Department within three years from March 30, 1822; but some time between December 25 and the end of the year 1829 the State did return to the Treasury Department of the United States "a complete map of the route of the canal connecting the Illinois River with Lake Michigan." The map filed in 1829 is known as the Thompson map, and is the first

and only one, so far as the record shows, ever filed with the Treasury Department. It was filed in December, 1829, under the provisions of the act of 1827. This fact appears from the certificate of the Commissioner of the General Land Office, and also from that of the secretary of the canal commissioners of the State. Both officials assert that the map was filed "under the provisions of the act of Congress approved March 2, 1827." The general route is said to agree in substance with that laid down on the map made by Messrs. Paul and Post.

The State commenced the construction of the canal in the year 1837, and completed it in 1847, upon the route as shown by the Thompson map filed in the Treasury Department.

*Mr. Howard M. Snapp* for plaintiffs in error.

*Mr. William M. Springer*, for defendants in error, submitted on his brief.

Mr. Justice Peckham, after making the above statement of facts, delivered the opinion of the court.

The plaintiffs in error claim that upon the passage of the above mentioned act of Congress of 1822 the State of Illinois immediately became vested with the title to a strip of land ninety feet wide on each side of the route of the canal through the public lands of the United States from Lake Michigan to the Illinois River, and that the act of Congress of March 2, 1827, did not alter or in any way affect the provisions of the act of 1822 or take away the title which they claim had already vested in the State by the passage of that act; that although the title to any specific portion of land under the act 1822 was in the nature of a float until the route of the canal was surveyed and adopted and a map thereof made and filed in the Treasury Department, yet when that was done the title to the ninety feet on each side of the canal was vested in the State as of the date of the passage of the act.

The various land grants made by Congress to railroads are cited for the purpose of showing that the act of 1822 constituted a grant of lands in *praesenti* and absolute in character, although to be thereafter identified by future action. *Schulenberg v. Harriman*, 21 Wall. 44; *Leavenworth, Lawrence & C. Railroad v. United States*, 92 U.S. 733, 741; *Railroad Company v. Baldwin*, 103 U.S. 426; *United States v. Southern Pacific Railroad Company*, 146 U.S. 570; 146 U.S. 615; 168 U.S. 1.

The language of the act of 1822, it will be observed, is somewhat peculiar and differs from that generally used in the land grants to railroads, which usually contain the expression that "there be and is hereby granted" to the railroad companies the lands mentioned, or words of similar import. In this act it is provided that "ninety feet of land on each side of said canal shall be forever reserved from any sale to be made by the United States except in cases hereinafter provided for, and the use thereof forever shall be and the same is hereby vested in the State for a canal, and for no other purpose whatever—on condition, . . . if said ground shall ever cease to be occupied by and used for a canal suitable for navigation, the reservation and grant hereby made shall be void and of none effect. . . ."

By this language the strict technical title is not conveyed to or vested in the State. It is simply a provision withdrawing from sale this strip of land and vesting the use of it for a canal, and for no other purpose whatever, in the State, with a condition that if not so used the reservation and grant are to be void. If proceedings had in fact been taken under this act, the route surveyed and a map thereof made and filed in the Treasury Department in compliance with the provisions of the

act, then the use of the land designated on the map so filed, for the purpose mentioned in the act of 1822, would very likely have vested in the State as of the date of such act. The action of the authorities on the part of the State, after the passage of the act of 1827 and up to the filing of the map in 1829, shows, however, that it was the act of 1827 and not that of 1822 which was in their contemplation when the map was filed in the Treasury Department.

During 1823 and 1824 a route was surveyed and marked through the public lands of the United States for a canal connecting the Illinois River "*with the southern bend of Lake Michigan,*" but it does not appear that the route was ever adopted or that a map of such route was ever filed. The map which was filed in 1829 purported to show the route of a canal connecting the Illinois River with Lake Michigan, omitting the expression "*with the southern bend of Lake Michigan,*" which latter description, it is said, would, if closely and technically followed, have taken the canal into the State of Indiana. The route of the canal laid out on the map filed did connect the canal with the waters of Lake Michigan in the State of Illinois, but not in terms with *the southern bend of that lake*. It is claimed, however, that the two descriptions, "*the southern bend of Lake Michigan*" and "*the waters of Lake Michigan,*" are substantially identical, and the route of the canal as marked on the map of 1829 is in all material matters the same as that surveyed under the act of 1822. However this may be, it cannot be denied that between 1822 and the passage of the act of Congress in 1827 no route had been adopted for the canal and no work of construction had been commenced thereon, although, as already stated, a route had been surveyed and marked, yet none had been adopted, and none was adopted until after the passage of the State Act of January 22, 1829. This appears by the fifth section of that act, in which the canal commissioners were authorized to explore, examine and determine and fix upon the most proper and eligible route for a canal, and to cause maps, surveys, profiles, etc., to be made, and thereafter, when they deemed it expedient and funds could be secured, they were authorized to commence the work of constructing the canal. The sixth section of the same act had special reference to the selection of the land granted by the Congressional act of 1827.

The filing of a map with reference only to the act of 1827, specifying both the sections reserved to the United States and those granted to the State under that act, would not thereby fix and identify lands which had been mentioned but not identified, in a different and prior act, and which were not referred to in any way in the map filed under the act of 1827. No lines showing the boundary of a strip ninety feet wide on each side of the canal were ever placed on the map which was filed in the Treasury Department in 1829, the only map which was ever filed there. That map showed the proposed route and also the sections granted to the State and those reserved to the United States, and the right of way along the route would be taken to be for a canal of the proposed width as stated in the acts of the General Assembly, and which width was accepted and acquiesced in by Congress and the Government.

It was not until 1848, eleven years after the work of construction was commenced and a year after the completion of the canal, as is stated by counsel for plaintiffs in error in his brief, that a survey was made of the ninety feet strip on each side of the canal from one end to the other, and the lines of that survey marked on maps under the direction of the canal com-

missioners, and the maps and profiles of the survey filed in the office of the state canal commissioners, but not with the Commissioner of the General Land Office or in the Treasury Department at Washington. This action of the canal commissioners was a mere *ex parte* assertion made by state officials upon their own maps, nearly twenty years after the filing of the map in the Treasury Department, indicating a possible claim of right on behalf of the State, but never laid down on any map filed in Washington.

The differences between the two acts in question and their inconsistent provisions are noticeable. That of 1822 provides for the use of land through the whole of the public domain ninety feet wide on each side of the canal. That of the act of 1827 grants a quantity of land equal to one half of five sections in width on each side of such canal, and reserves each alternate section to the United States, etc. In the sections reserved, therefore, no title to or use of the ninety feet on each side of the canal is given, while in the alternate sections not reserved to the United States the whole title is granted to the State. The third section of the act of 1827 gives power to sell and give title in fee to the land granted, while the act of 1822 grants no title, and provides for resuming possession of the land if at any time the same is not used for a canal. The filing of a map under the act of 1827 would clearly not be a fulfillment of the provisions as to the filing made in the act of 1822.

The Congressional act of 1827, nevertheless, implies by its language and subject-matter the consent of Congress to a right of way through the public lands, and the subsequent state act of 1829, in the eleventh section, showed the width of the canal contemplated, which was the same as the prior and repealed act of 1825 provides for. Of course, a towpath would be added. These two acts show the intention of the parties to proceed thereafter with reference to the act of 1827 and not under that of 1822. Work was not in fact commenced until in 1837.

When Congress under the act of 1827 granted the alternate sections to the State throughout the whole length of the public domain, in aid of the construction of the canal, it also granted by a plain implication the right of way through the reserved sections, for it cannot be presumed the Government was granting all these alternate sections to the State for the purpose avowed, and yet meant to withhold the right to pass through the sections reserved to the United States along the route of the proposed canal. But the implication would not extend to the ninety feet on each side. It would extend to the land necessary to be used for the canal of the width contemplated, and that had been asserted in an act of the general assembly in 1825 and was subsequently reiterated in another act of that body (1829).

Upon all the facts in the case it is plain that the act of 1822 was mutually abandoned by the parties so far as concerned the land grant after the passage of the act of 1827, and that the right of way through the reserved sections was treated and regarded as impliedly granted by the latter act, under which the larger grant was made, and that the map was filed under that act, and none was ever filed under the act of 1822. The State never took title to the strip of land ninety feet wide on each side of the route of the canal through the public lands, so far as related to the sections reserved to the United States by the act of 1827, of which section ten herein involved was one.

It is not a question of forfeiture of the grant under the act of 1822. There was no forfeiture; it was a mutual abandon-

ment of that act for the act of 1827. Taking all the facts into consideration, the State never acquired an absolute title to the ninety feet strip, as by the language of the act of 1822 the use only was granted, and it required a subsequent filing of a map as provided for in that act before the right to the use was acquired and made definite and fixed as to any particular land, and before that time arrived the act of 1827 was passed, which was to a certain extent inconsistent with the former act, and the State in fact thenceforth proceeded under the later act and filed its map thereunder and constructed the canal with reference thereto.

We think the judgment of the Supreme Court of Illinois was right, and it is therefore

*Affirmed"*

**Related Court Decisions:** There are a number of other cases which have been decided by the courts, and which bear on the question of canal titles. There is no particular agreement among them, and where they conflict with the decision of the United States Supreme Court in the Werling case would presumably be overruled by that case. Among the related cases are the following:

*Ex Parte Boyer* (109 U.S. 629) 1884 (appendix 57)

*Wheeler v. City of Chicago* U.S. Circuit Court  
N.D. of Illinois 1895 (appendix 58)

*Burke v. Snively* (208 Ill. 348) 1904 (appendix 59)

*Wells v. Wells* (252 Ill. 320) 1914 (appendix 60)

*Mortell v. Clark* (272 Ill. 201) 1916 (appendix 61)

*People v. McDonnell* (362 Ill. 114) 1935 (appendix 62)

*Columbia Haley Dooner et al. v. United States*  
(95 U.S. Court of Claims 392) (appendix 63).

**Opinions of the Attorney General of the United States:** The Attorney General of the United States apparently has not been called upon for an opinion relative to the Illinois and Michigan Canal. The Attorney General, however, has rendered several opinions relating to the Indiana canal grants, and as the conditions of the Illinois canal grants are similar, the opinions would probably apply with equal force to the Illinois and Michigan Canal. Appendix 64 is an opinion given by Attorney General Johnson in 1849, and appendix 65 is an opinion given by Attorney General Devens in 1879. Attorney General Devens'



opinion was based on the following Resolution of the Senate of the United States dated March 19, 1878:

*"Resolved, That the Attorney-General be hereby directed to report to the Senate whether the lands and rights granted by the United States to the State of Indiana by the act entitled 'An act to authorize the State of Indiana to open a canal through the public lands to connect the navigation of the rivers Wabash and the Miami of Lake Erie', approved May 26, 1824 (4 Stat. 47), have, according to the terms of said act, reverted to the United States; and, if so, what action on the part of the United States, legislative or otherwise, is necessary and proper to enable it to obtain possession thereof."*

The headnotes to Attorney General Devens' opinion read as follows:

*"The act of May 26, 1824, entitled 'An Act to authorize the State of Indiana to open a canal through the public lands to connect the navigation of the rivers Wabash and Miami of Lake Erie' examined and considered with reference to the subject of whether there has been a forfeiture of the right of way (including ninety feet on each side of the canal) granted to the State of Indiana by said act, and, if so, whether the United States can now assert any claim to the lands covered by said right of way.*

*The provision in the first section of said act, namely, that "ninety feet of land, on each side of said canal, shall be reserved from sale on the part of the United States, and the use thereof forever be vested in the State aforesaid for a canal, and for no other purpose whatsoever," is a grant not of the land within ninety feet on each side of the canal, but of an easement therein, which is restricted to a particular purpose, the fee remaining in the United States.*

*Where the legal subdivisions out of which that estate was carved were sold or granted by the Government the purchaser or grantee took the title thereto subject to the easement, unless the ninety feet "on each side of the canal" were excepted out of the patent.*

*Seemle that in patenting these subdivisions no such exception was made; and therefore the United States no longer have any interest in the lands subject to the easement, but on forfeiture of the easement the absolute property in such lands would become vested in the patentees.*

*A forfeiture may be declared (either by judicial proceedings authorized by law or by legislative act) in case the lands have ceased "to be used and occupied for the purpose of constructing and keeping in repair a canal, suitable for navigation"; but it can only be declared by or in behalf of the United States. Congress may in such case declare the forfeiture, or direct that proper legal proceedings be instituted to the end of having it declared.*

Department of Justice  
January 16, 1879"

**Opinions of the Attorney General of Illinois:** The Attorney General of Illinois has rendered a number of opinions relating to the canal. On the question of titles, an exhaustive opinion was given (appendix 66) on November 9, 1917. The Attorney General said:

*"It is our opinion, therefore:*

(1) The State holds the title in fee to the bed of the entire

canal, including the feeder and appurtenances in section 30 of township 39 in range 13 east of the Third Principal Meridian.

(2) The title of the State is subject to no conditions, except those which may be expressed in or implied from the Federal acts of 1827 and 1833.

(3) No one, except the United States, may claim a forfeiture, based upon an alleged breach of those conditions.

(4) There has been no abandonment, in the legal meaning of that term, of any portion of the canal, by the State; and even if there were such an abandonment, it would not operate, in itself, to divest the State of its title.

(5) While we think that there has been no breach by the State of the conditions of the Federal grant, and that the State is now the absolute owner of the bed of the canal, in view of the diversity of opinion as to the scope and effect of those conditions, it is desirable either that the State's absolute title be confirmed by an act of Congress, or that in a suit between the United States and the State, the rights of each under those conditions be definitely adjudicated.

(6) In view of the Federal act of 1899, the State may not fill up the bed of the canal, without the authorization of the Federal government; nor may the State, without the sanction of the Federal government, permit anyone to fill up the bed of the canal. There is no statute, which is now in force, or which has ever been in force, giving authority to any officer or agency of the State, or to any municipality, to fill or authorize the filling or obstructing of the canal except the limited authority granted to the Sanitary District alone in the act of 1903.

(7) It is the duty of the officers of the State, charged with the control and protection of the canal, to assert the State's ownership and possession of the canal, to prevent the filling up or obstruction of the canal, and to take steps to stop encroachments upon the bed of the canal, in the same manner and by the same means as the other property of the State is protected. If, after notice, there are those who persist in unlawful acts with reference to the canal, the officers of the State are justified, and it is their duty, to resort to whatever coercive measures are necessary. In view of the large number of those engaged in filling up and obstructing the canal, and the apparent difficulty in fixing the ultimate responsibility for their acts, the efficacy of suits for injunction is doubtful, and the most effective means will probably be the ordinary police measures, involving the prosecution of offenders, and the employment of the requisite force, as the occasion may require, for the protection of the canal.

Yours very truly,  
James H. Wilkerson,  
Assistant Attorney General

Approved:  
Edward J. Brundage,  
Attorney General

**Other Opinions Relating to the Canal Titles:** There have been several analyses of litigation, and numerous opinions expressed regarding the canal lands and titles. Among these are a lengthy memorandum prepared by the Corporation Counsel of Chicago in 1941, and an analysis of the law and court decisions made by the Division of Waterways in 1943. In 1944, the Research Department of the Illinois Legislative Council issued Publication No. 64 (appendix 67) dealing principally with the legal problems relating to the canal.

**Related Legal Problems:** Related to the problem of ownership of the so-called reserve strips in general is the question as to how the line between the canal property and abutting proprietorship would be properly and specifically established upon the ground. It has been variously held or claimed that the 90 foot lines should be laid off from the center line of the canal; from the water line of the "water prism" of width as authorized by the State; and from the "canal prism" or top angles of the banks as reflected by the "Canal Survey" of 1848. This matter is touched upon in *Werling v. Ingersoll*, but otherwise, so far as presently known, has not been decided by any court. The question, in a way, has, however, been before the courts. The canal records show the following notes regarding *Hadley v. Canal Trustees* 1854:

*"L. Hadley v. Canal Trustees*

Box 6, Circuit Clerk, Ottawa, April 20, 1854

Injunction—*Hadley vs. Canal Trustees*

"To stop Canal Trustees from removing gravel and earth from 90 ft. strip S.W.  $\frac{1}{4}$  Sec. 18-33-3, So. of said Canal and its towpath." Plaintiffs' Bill—"Your orator further shows that the earth and gravel removed as aforesaid has been taken chiefly from a part of said land lying within 90 ft. of the line of said Canal, but that a very considerable portion of the earth and gravel thus removed has been from a part of said premises lying more than 90 ft. from the center line of said Canal." "Your orator further shows that the said defts. by their agents claim that they have a legal right to all land lying within 90 ft. of center line of Canal which your orator claims is not true, etc."

Canal Trustees' Answer, "These defts. further answering admit that they have taken earth from a portion of the said premises in said bill described but deny that they have taken away or intended to take away more than 90 feet from the prism of the Canal. They respectfully submit that they have a legal right to take said sand, gravel and earth within 90 ft. from the Canal for the purpose of repairs, etc., etc." In answer by Canal Commissioners the Act of 1822, 1827, and various State Legislative Acts are referred to. Mr. Arnold, Attorney for the Canal Trustees stated that the failure to file the map within 3 years called for in the 1822 Act was waived by Congress when the enabling Act of 1827 was passed.

Decree—"Dismissed without prejudice by Plaintiff's Attorney."—"It is therefore considered by the Court that the defendants have and secure of the complainants its costs and have execution therefor." (Chancery Docket "C").

"Thos. Beard was the Original Patentee of S. W.  $\frac{1}{4}$  18-33-3."

"A. D. Ward to L. Hadley, January 15, 1852, S. W.  $\frac{1}{4}$  18-33-3 containing 175.84 acres, reserving and excepting the Canal and the legal claims appertaining." (Some swamp land in adjoining or in this piece.)"

The varying views regarding the proper location of the so-called reserve strips is exemplified by the following letter concerning an ejectment suit against one Cusick:

"Chicago, Illinois  
August 15, 1889

Captain J. M. Leighton

Dear Sir:

We have instituted suit against Cusick. The time for trial

is set for two o'clock on the 22nd inst., at which time it will be necessary to have some evidence of the fact that Cusick is really on the Canal property. I suggest to you that in the meantime you personally make a measurement showing that he is in possession of the premises described in your notice. You will find a description of the premises inclosed. In order to determine the fact measure from the center of the canal, as it now is, allowing 30 feet for one half of the canal and 90 feet more for the ninety foot strip. You will by that means be able to determine whether or not he is actually located on the premises described.

Very truly yours,  
/s/ Campbell & Custer  
J. A. G.

Please preserve and return to us the enclosed paper.—C. & C."

The suit against Cusick was reactivated in 1894, as shown by the following letter. The status and nature of the controversy is outlined, and the letter is of interest in showing that nearly five years after beginning suit the attorneys for the Canal Commissioners were unaware of the existence of the "Canal Survey" plats in the canal office:

"Custer, Goddard & Griffin,  
Attorneys and Counselors,  
Chicago

January 11, 1899

The Canal Commissioners,  
Lockport, Illinois  
Gentlemen:

We have investigated the facts in the case of The People of the State of Illinois vs. Thomas Cusack, an ejectment suit which was begun by your predecessors for the purpose of ousting one Thomas Cusack from a portion of the north ninety foot strip just west of Kedzie Avenue, in the City of Chicago, which he was occupying under a lease from the heirs of David A. Jones, deceased. At the time when the lease was made by the Jones heirs to Thomas Cusack and Patrick E. McDonnell, to-wit, on the 30th day of April, 1895, Cusack was supposed to be occupying land belonging to the Jones Estate, as well as a portion of the ninety foot strip, and it was by reason of his occupancy of the Jones land that the lease was made to him, and not by reason of any intention on the part of the Jones heirs to lease to Cusack any part of the ninety foot strip. To be sure the description in the lease is broad enough to cover the north half of the canal as well as the ninety foot strip adjoining, but it is made subject 'to the rights of the Illinois and Michigan Canal in the demised premises'. There is therefore no disposition on the part of the Jones heirs, or their attorney, Mr. Jones, of the firm of Swift, Campbell and Jones, of this city, to assert any claim to the ninety foot strip, either through the possession of Cusack or otherwise, and it follows that there is no objection to making to Cusack a lease of that portion of the ninety foot strip, which he occupies, and collecting rent from him for the same.

It must not be inferred, however, that the making of such a lease to Cusack would remove all controversy and warrant the dismissing of the pending suit. On the contrary there is still a matter in dispute between the Canal Commissioners and the Jones estate, which may be said to arise out of differing surveys and a supposed uncertainty as to the true location of the canal. The Jones estate, it seems owns the property next north of the ninety

foot strip, on the north side of the canal, and in order to ascertain the true location of their south boundary line, they caused a survey to be made covering the district as far north as Thirty-first Street and as far south as the South line of the canal reserve; as far east as Kedzie Avenue and as far west as Central Park Avenue. We have had submitted to us for examination a plat of this survey, certified by the Greely-Carlson Company, on January 5, 1893, and from this plat it appears that the bed of the canal is not in its true location, as shown by 'a map in the Canal Commissioners' Office', the discrepancy being about 25 feet near Kedzie Avenue and somewhat less a quarter of a mile further west; that is to say, the actual location of the canal is shown to be so much further north than the location as platted on the canal map. The real controversy in the Cusack suit, therefore, is simply as to where the north line of the ninety foot strip is located, the Jones heirs claiming, on the strength of the Greely-Carlson survey, as stated above, that this line is somewhere about twenty-five feet further south than would be indicated by the location of the bed of the canal.

If you deem this question of sufficient importance to receive attention, you should first satisfy yourselves as to the facts. You should examine the map said to be 'in the Canal Commissioners' Office.' From this and from the other data in your possession, you should cause a survey to be made for the purpose of ascertaining and showing upon a plat, the true location of the north line of the canal reserve. From a comparison of the plat of such a survey with the plat of the survey made by the Greely-Carlson Co., it will appear whether there is in fact any difference between you and the Jones heirs as to the location of this line; and if so, we may then proceed, either in the Cusack suit or in some other proper proceeding, to have the controversy settled by the courts.

We have never been informed that there is any such map in the Canal Commissioners' Office, as we find referred to in the plat now before us, and we have no plats of surveys made for the Canal Commissioners which aid us to form any opinion as to the correctness of the Greely-Carlson survey and plat or wherein the location of the north line of the ninety foot strip may differ from the location of that line as claimed by the Canal Commissioners.

The Cusack suit was reached for trial while negotiations were pending with Cusack, with a view to making a lease from the Canal Commissioners to him of that portion of the ninety foot strip which he is occupying. Pending these negotiations, the case was passed to be taken up for trial upon twenty days notice, to be given by either party. We have not been served with notice by the attorneys on the other side, that they would set this case for trial, and judging from past experience, it is not likely that any steps will be taken by them to bring the case to trial. We make this report in order to enable you to act intelligently in disposing of this suit, and we await your instructions in the matter.

Very truly yours,  
/s/ Custer Goddard & Griffin"

The Cusack suit was continued until 1906. Due to consideration of time, the question as to whether judgment was rendered, or the case dropped has not been investigated.

In the case of *Wells v. Wells* (appendix 60), a map entitled "J. H. Rees' subdivision of the west half of the southwest quarter of section 36, and that portion of the southeast quarter of section 35 lying south of the Illinois and Michigan Canal, being all

in town. 39, range 13, east of the third P.M." was introduced in evidence. This map was filed for record with the recorder of Cook County on February 24, 1869. A comparison of the Rees' map of this part of the canal with the "Canal Survey" plat shows that the north reserve line has the same location on both. The Rees' map, however, shows the "canal" as 66 feet wide, whereas the "Canal Survey" plat shows the "canal" as 105 feet wide. The overall width between the north and south reserve lines is thus some 246 feet as shown by the recorded Rees' map, and some 285 feet as shown by the "Canal Survey" plat.

## CHAPTER 16

### ATTEMPTS BY THE STATE TO PERFECT TITLE

**Proceedings by the State to Perfect Title:** The opening of the Chicago Drainage Canal in 1900 marked the obsolescence of the Illinois and Michigan Canal from Lockport to Chicago as a useful commercial waterway. The completion of the Illinois Waterway, or canalization of the Illinois River, about the year 1930, made the canal west of Lockport also obsolete as a commercial waterway. The entire canal was, in effect, replaced by a modern, larger, and deeper waterway, much as envisioned by the Board of Engineers in 1887 in reporting on the proposed acquisition of the Illinois and Michigan Canal by the United States. The status of the canal in 1911 is described by the following extract from the report of a Special Board of Engineers, known as the Bixby Board:

"For many years this waterway was a valuable transportation route, but in recent years the state has neglected it and failed to maintain it abreast of the needs of commerce. The work now proposed by the state in connection with the canal of the Chicago Sanitary District contemplates a waterway from Lake Michigan to Utica, which, although departing from the line of the old canal, will in effect fulfill the original agreement between the state and general government for this section.

/s/ W. H. Bixby  
Brig. Gen., Chief of Engineers,  
United States Army"

The replacement of the Illinois and Michigan Canal as a useful commercial waterway, by the construction of the Chicago Drainage Canal and the Illinois Waterway, was effected by the Chicago Sanitary District, the State of Illinois, and the Government of the United States.

The precise nature and scope of the titles of the State of Illinois to the canal right of way, particularly in the even-numbered sections has, apparently, always been in doubt. The State has, since about 1900, made attempts to perfect these titles, both by judicial process and legislative action.

**The Judicial Process, *Werling v. Ingersoll*:** The *Werling* case, reported in Chapter 15, was a test case, instituted by the Canal Commissioners to determine ownership of the so-called reserve strips in an even-numbered section. The matter was taken through the various courts and the Supreme Court of the United States finally ruled that the State of Illinois never took title to a strip of land 90 feet wide on each side of the canal in the even-numbered sections through which the canal passes. The basis of the decision was that the State did not comply

with the condition of the Act of March 30, 1822 requiring the filing of a map of the canal location.

Since the decision of the Supreme Court of the United States in the *Verling* case, the State of Illinois has not attempted to clarify titles by further judicial proceedings. In 1933 (appendix 72), the map of Post and Paul transmitted to President Monroe in 1825 was reported to have been discovered in the files of the War Department. Its location there was certainly known in 1899, as shown by the following letter:

"WAR DEPARTMENT  
Washington  
March 30, 1899

Sir:

In compliance with the request contained in your letter of 28th instant, I have the honor to transmit herewith certified copy of the report of the Canal Commissioners of the State of Illinois, together with map of the country between the head waters of the Illinois river and Lake Michigan, showing the proposed route of the Illinois and Michigan Canal; also, copy of a letter from Governor Edward Coles, transmitting the said report and map to President Monroe, under date of January 20, 1825.

Very respectfully,  
Acting Secretary of War

Seymour Jones, Esq.  
1st Asst. Atty. Sanitary Dist. of Chicago  
Washington, D. C.  
(Inclosures; Authenticated copies referred to)"

**Legislative Action in the Congress, 1907-1944:** The State of Illinois, or its agencies, has sponsored legislation in various Congresses since 1907, with a view to clarifying or perfecting titles to the canal right of way. A brief history of these proceedings, from data found principally in the Congressional Journals and Records, is as follows:

January 15, 1907—"By Mr. Wilson: A bill (H.R. 24271) in relation to the Illinois and Michigan Canal and granting to the State of Illinois all rights, easements, and title of the United States in, to, and into that portion of said canal lying between the upper basin situated in the city of Joliet and Lake Michigan;—to the Committee on Interstate and Foreign Commerce."

April 7, 1910—"By Mr. Snapp, (by request): A bill (H.R. 24213) granting title to certain land to the State of Illinois;—to the Committee on Public Lands."

April 13, 1910—"By Mr. Cullom: A bill (S. 7698) granting to the State of Illinois all claims of the United States in the Illinois and Michigan Canal;—to the Committee on Commerce."

May 20, 1910—"By Mr. McDermott: A bill (H.R. 26131) granting to the State of Illinois all claims of the United States to the Illinois and Michigan Canal;—to the Committee on Public Lands."

December 9, 1910—"By Mr. McDermott: A bill (H.R. 28615) granting to the State of Illinois all claims of the United States in the Illinois and Michigan Canal;—to the Committee on River and Harbors."

Mr. Charles L. Walker, Attorney for the Canal Commissioners, prepared, and presumably filed, a statement and brief



(appendix 68) with the Committee on Public Lands in connection with H. R. 24213.

May 25, 1933—"By Mr. Dieterich and Mr. Lewis: A bill (S. 1773) authorizing the State of Illinois to abandon the Illinois and Michigan Canal, and to grant to the State of Illinois all right, title, and interest of the United States in and to the land comprising the right of way of the Illinois and Michigan Canal, as the same was routed and constructed through the public lands of the United States, in the State of Illinois, pursuant to the act of Congress of the United States of March 2, 1827, and in and to the 90 feet of land on each side of said canal, vested in the State of Illinois pursuant to the act of Congress of the United States of March 30, 1822;—to the Committee on Commerce."

January 10, 1935—"By Mr. Dieterich: A bill (S. 710)—to the Committee on Commerce."

By letter of March 25, 1935 (appendix 69), the Secretary of the Interior disapproved S. 710.

January 29, 1937—"By Mr. Dieterich: A bill (S. 1194) granting to the State of Illinois all right, title, and interest of the United States in and to the land comprising the right of way of the abandoned Illinois and Michigan Canal as the same was routed and constructed through the public lands of the United States in the State of Illinois, pursuant to the act of Congress of the United States of March 2, 1827, and pursuant to the act of Congress of the United States of March 30, 1822;—to the Committee on Public Lands and Surveys."

This bill was also disapproved (appendix 70) by the Department of the Interior.

**Proceedings of the Seventy-eighth Congress, second session, 1944-1945:** In this session of Congress, H. R. 4626 was introduced by Representative Sabbath of Illinois, evidently at the request of the Sanitary District of Chicago and of the City of Chicago. The Congressional Record cites this bill as follows:

*"Be it enacted by the Senate and the House of Representatives of the United States of America in Congress Assembled:* That all that portion of the Illinois and Michigan Canal extending from the east line of South Ashland Avenue, in the City of Chicago, Illinois, to the boundary line between Cook and Will Counties be, and the same is hereby, declared to be a non-navigable stream within the meaning of the Constitution and laws of the United States.

Sec. 2. That the right of Congress to alter, amend or repeal this section is hereby expressly reserved."

In the House, the bill was referred to the Committee on Interstate and Foreign Commerce. On November 30, 1944 (Legislative day, November 21, 1944), the Committee reported (appendix 71) favorably and recommended that the bill do pass. It was passed by the House and sent to the Senate. The bill was passed by the Senate on December 14, 1944. On December 15, 1944, however, Senator Brooks moved that the vote by which the bill passed be reconsidered, and that the bill be returned to the Calendar. The bill was thereupon returned to the Calendar, and no further action was taken.

Proceedings of the Seventy-ninth Congress, first session, 1945: In this session of Congress, a series of bills relating to clarifying the status of the canal titles was introduced. These comprise H. R. 329, H. R. 330, H. R. 2298, H. R. 3041, and S. 953. Generally these are similar to those previously described, and all were disapproved by the Department of Interior. The position of this Department relative to such legislation is shown by the following report on S. 953:

“THE SECRETARY OF THE INTERIOR

WASHINGTON 25, D. C.

July 19, 1945

My dear Senator Hatch:

Reference is made to the letter of May 4 from your Committee requesting a report on S. 953, a bill ‘Granting to the State of Illinois, all right, title, and interest of the United States of America, in and to the land comprising the right-of-way of the Illinois and Michigan Canal, as the same was routed and constructed through the public lands of the United States in the State of Illinois, and in and to the ninety feet of land on each side of said canal for the entire length thereof’.

I am informed that an early expression of the position of this Department is desired. Accordingly, I am submitting this brief report, together with copies of reports submitted to the 74th and 75th Congress with respect to bills similar to S. 953, as an interim statement of my views in the matter. A more detailed and comprehensive report is now being prepared, and will be submitted to your Committee as soon as possible.

I am unable to recommend the enactment of S. 953, or any of the similar bills now pending before the Congress, in their present form. The pertinent considerations, summarized briefly, appear to be as follows:

(1) S. 953 is in no respect similar to the bill which was passed by the House of Representatives in the 78th Congress (H.R. 4626, 78th Congress, 2nd Session).

(2) The objectives of the proposed legislation, as indicated by statements presented to the Congress and through investigations made by the interested agencies of this Department, are desirable.

(3) None of the proposals so far presented to the Congress appears to be adequate to the accomplishment of those objectives.

(4) The enactment of any of the proposed bills, including S. 953, would probably result in a multiplicity of suits against the State of Illinois and the United States.

(5) The ownership by the United States of a reversionary interest in any of the lands which it is proposed be granted to the State of Illinois is not at all certain.

(6) The ‘ninety feet of land on each side of the canal’ referred to in the bill has been held by the United States Supreme Court not to be part of the right-of-way, *Werling v. Ingersoll*, 181 U. S. 131.

(7) The respective legal interests of the United States, the State of Illinois, and the abutting landowners in the lands, traversed by the right-of-way probably can be finally determined only by the courts.

(8) It is believed that the desired objectives might be accomplished, in part at least, by an appropriate amendment

to the Act of March 2, 1827, (4 Stat. 234), under which the United States Supreme Court has said the canal was constructed.

(9) Such an amendment probably could provide for the use of the right-of-way as a highway rather than as a canal without infringing the legal rights, if any, of the abutting landowners in the lands crossed by the right-of-way.

The report, which it is proposed to file at a later date, will discuss these and other points, the applicable statutes and relevant decisions of the courts, together with the implications of the proposed legislation.

The bureau of the Budget has advised me that there is no objection to the presentation of this report to your Committee.

Sincerely yours,  
(sgd.) HAROLD L. ICKES  
Secretary of the Interior

Hon. Carl A. Hatch  
Chairman, Committee on Public Lands and Surveys,  
United States Senate."

**The Illinois and Michigan Canal Commission:** In April 1944, the Division of Waterways of the Department of Public Works and Buildings issued a report (appendix 72) outlining the principal problems relating to the canal. This report recommended the establishment of a Board of Review, or Commission, to investigate all problems relating to the canal, and to formulate policy relating thereto.

By Act approved February 21, 1945 (appendix 73), the General Assembly created the Illinois and Michigan Canal Commission. This Commission of some 15 members from the House, Senate, and State Agencies was charged as follows:

"The Commission shall make a study of the Illinois and Michigan Canal with particular reference to obtaining information as what national and state legislation and other steps would be necessary to change the physical properties of the canal so that they would serve a more useful purpose."

The Commission was required to report to the General Assembly by May 1, 1945. An appropriation of \$10,000 was made for the work of the Commission. On May 1, 1945, a preliminary report (appendix 74) was presented to the General Assembly. The Commission reported that a bill had been drafted for introduction in Congress whereby the United States would deed all its right, title, and interest in and to the canal and the 90 feet on each side thereof to the State of Illinois. On May 10, 1945, by Senate Joint Resolution No. 32 (appendix 75), the General Assembly memorialized Congress to enact the bill prepared by the Commission.

By Act approved July 24, 1945 (appendix 76), the General Assembly re-created the Illinois and Michigan Canal Commission and made a further appropriation of \$15,000 therefor. The following duties were specified:

The Commission shall:

- (1) "Make a complete study of all matters pertaining to the Illinois and Michigan Canal, its origin, its uses, past and present, and its future possibilities."
- (2) "Gather and obtain all facts, data and information pertain-

- ing to and having to do with all phases of the canal, the abutting land and the claims of certain persons, firms and corporations to the canal bed and the abutting property.”
- (3) “Gather and obtain information relative to the various uses to which the canal or parts thereof could be legally and advantageously diverted.”

On June 18, 1947, the Commission made the following report to the General Assembly:

“His Excellency the Governor, Dwight H. Green and the Honorable Members of the Sixty-fifth General Assembly:

The Commission created and appointed under an Act entitled ‘*An Act to create the Illinois and Michigan Canal Commission; to define its powers and duties and to provide an appropriation therefor*’, approved July 24, 1945, submits the following report for your consideration.

Respectfully submitted,

Richard J. Barr  
J. Ward Smith  
W. S. Finucane  
Henry Knauf  
Geo. G. Noonan  
Paul J. Randolph  
Stanley J. Mondala  
Chas. W. Baker  
O. E. Benson  
Thomas B. Casey  
G. F. D. Zimmerman

#### Report of the Illinois-Michigan Canal Commission.

The Illinois-Michigan Canal Commission held numerous meetings since its creation for the purpose of studying the various phases and problems of the Illinois and Michigan Canal.

The Canal was opened in 1848 and was a major factor in the growth of Illinois. For many years it was the principal route connecting Illinois with a vast portion of the United States. Gradually, however, it fell into disuse and when the Constitution of 1870 was adopted, it contained a provision prohibiting the General Assembly from appropriating any money for Canal purposes. The canal now in many places has become stagnant and might well become the source of a major epidemic. Along the route of the Canal are many historic places which should be properly dedicated and maintained. From Lockport to Chicago it is ideally set up for super-highway purposes.

Our studies and research determined that the exact route of the Canal has never been surveyed by modern means nor is there any exact certainty as to what land on either side of the Canal is the property of the State of Illinois. In spite of the vigilance of the Division of Waterways of the Department of Public Works and Buildings under whose jurisdiction the Canal is now maintained, countless squatters and usurpers have taken possession of the land contiguous to the Canal.

The Commission concluded that before the State of Illinois could rectify the foregoing problems it would be advisable to secure a conveyance in the nature of quit claim deed from the United States Government to the right of way of the Canal and ninety (90) feet on either side thereof as was conveyed to the State in the original grant from the Government in 1822.

The Commission met in Washington with representatives and attorneys of the United States Department of Commerce, the War Department and the Attorney General, at which conference a bill to be submitted to the Congress of the United

States was agreed upon by the conferees, subject to further approval of the engineer of the War Department in Chicago.

Subsequently a conference was held with the War Department Engineer who made certain suggestions which were agreed to, and a bill carrying out the agreements of the various interested parties was accordingly prepared and forwarded to Washington for introduction by the Honorable Chauncey Reed. This bill, H.R. 1628, conveys the Government's interest in the Canal and ninety (90) feet on either side thereof to the State of Illinois for 'highway, park, recreation or other public purposes'. The bill was recently passed unanimously by the House of Representatives and according to all expectations, will be passed by the Senate before this Session of Congress adjourns.

In addition to the passage of the aforementioned bill by the United States Congress, your Commission respectfully recommends:

- (1) That an appropriation be made to the Department of Public Works and Buildings for the purpose of making a full and complete survey of the right-of-way of the Canal and contiguous property so as to ascertain as nearly as possible the right, title and interest of the State of Illinois to the property involved.
- (2) That an appropriation be made to the Attorney General of Illinois for the purpose of taking proper action to eject trespassers from the property of the State of Illinois and to clear up all uncertainty with reference to the right, title, and ownership of the said canal property and such other property as was granted to the State of Illinois by the Federal Government, which has not heretofore been conveyed by the State.
- (3) The continuation of this Commission for the purpose of studying and making recommendations pertaining to the following problems arising from the present status of the Canal:
  - A. Drainage for adjoining property.
  - B. Water supply for adjoining property.
  - C. Health problems confronting the communities abutting the Canal.
  - D. Sewage disposal.
  - E. Roads and highways.
  - F. To determine the most practical way of adapting the Canal for conservation purposes, for Parks and recreational facilities.

Respectfully submitted,"

**Proceedings of the Eightieth Congress, first session, 1947-1948:** The bill (H. R. 1628) referred to in the above report of the Commission was introduced in the Eightieth Congress, first session, and referred to the Committee on Public Works of the House of Representatives. The Illinois General Assembly, by House Joint Resolution of April 9, 1947, again memorialized Congress (appendix 77) to pass the bill. On May 13, 1947, the Committee on Public Works reported (appendix 78) the bill without amendment and recommended that it do pass. The bill was approved by the Department of the Interior and the War Department. The bill was passed by the House and Senate and became law July 1, 1947. This law, representing the present status of the Federal interest in the Illinois and Michigan Canal, reads as follows:

*"An Act relinquishing to the State of Illinois certain*

*right, title, or interest of the United States of America, and for other purposes.*

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That* for the purpose of enabling the State of Illinois to use the lands now occupied by the Illinois and Michigan Canal for highway, park, recreational, or any other public purposes, there is hereby relinquished to the State of Illinois all such right, title and interest, if any, as the United States of America may have in and to any part of the land comprising the right-of-way of the Illinois and Michigan Canal, as the same was routed and constructed through the public lands of the United States of America in the counties of Cook, Will, Grundy, DuPage, and LaSalle, in the State of Illinois, pursuant to the provisions, insofar as applicable, of the Acts of March 30, 1822 (3 Stat. 659), March 2, 1827 (4 Stat. 234), and March 2, 1833 (4 Stat. 662), and in and to any part of the ninety feet of land on each side of the canal for the entire length thereof referred to in the Act of March 30, 1822 (3 Stat. 659); on condition, however, that if any of the lands with respect to which any right, title, or interest is hereby relinquished by the United States of America to the State of Illinois shall ever cease to be occupied and used for highway, park, recreational or any other public purposes then, and in that event, all such right, title, and interest, if any, in or to the lands which have ceased to be so occupied and used shall thereupon revert in the United States of America.

Sec. 2. This act shall affect only such right, title and interest of the United States of America in and to the lands described in section 1 hereof as may have been retained by the United States of America, in fee simple, as a reversionary interest, or otherwise, under the Acts of March 30, 1822 (3 Stat. 659), March 2, 1827 (4 Stat. 234), and March 2, 1833 (4 Stat. 662), and as has not been disposed of, prior to the approval of this Act, by the United States of America.

Sec. 3. *Provided that*, to protect the rights of navigation in or over the lands comprising the right-of-way of the Illinois and Michigan Canal and the ninety feet of land on each side of the canal in the sections or parts of sections hereinafter enumerated, the State of Illinois or any authorized agent thereof shall not change in any manner the physical conditions which exist at the time of the passage of this Act, unless such changes have been recommended by the Chief of Engineers and authorized by the Secretary of War; this to include construction, erection, or removal of any structure, excavation, or deposition of materials from or on such lands, and so forth. The sections in which such reservations are made are as follows:

Sections 16, 21, 22 and the west half of section 15, township 33 north, range 1 east, of the third principal meridian, LaSalle County, Illinois.

The east half of section 13, township 33 north, range 2 east, of the third principal meridian, LaSalle County, Illinois; and section 18, township 33 north, range 3 east, of the third principal meridian, LaSalle County, Illinois.

The east half of the east half of section 22, sections 23, 26, 25 and 36, township 34 north, range 8 east, of the third principal meridian, Grundy County, Illinois; and sections 30, 31, 29 and 20, township 34 north, range 9 east, of the third principal meridian, Will County, Illinois.

The east half of section 20, sections 21, 16, 10, 9 and 4, and the south half of section 3, township 35 north, range 10 east, of the third principal meridian, Will County, Illinois.

Section 14 and the east half of the east half of section 15,

township 37 north, range 11 east, of the third principal meridian, Cook and DuPage Counties, Illinois.

Sections 29, 28, 21, 16, 10 and 9, township 39 north, range 14 east, of the third principal meridian, Cook County, Illinois. Authorizations issued under the provisions of this Act shall contain the following clause: 'If future operations by the United States require removal or alteration in the structure or the work herein authorized, the State of Illinois will be required, upon due notice from the Secretary of War, to remove or alter the work without expense to the United States so as to render navigation reasonably free, easy, and unobstructed. No claim shall be made against the United States on account of any such removal or alteration.'

**Proceedings of the Sixty-fifth General Assembly, 1947:** By Act approved July 21, 1947, the General Assembly (appendix 79) accepted the terms and conditions of the Federal Act of July 1, 1947.

By Acts approved July 21, 1947 (appendix 80), the laws relating to the canal were amended so as to permit road construction on the canal right of way.

By Act approved August 8, 1947 (appendix 81) the Illinois and Michigan Canal Commission was again re-created, with duties similar to those established by the Act of July 24, 1945 and with a further appropriation of \$10,000.

**Proceedings of the Sixty-sixth General Assembly, 1949:** By Acts approved June 24, 1949 (appendix 82), the General Assembly again amended the laws relating to the canal so as to permit use of the canal right of way for highway or super-highway purposes.

In May 1949, the Illinois and Michigan Canal Commission made a report (appendix 83) to the General Assembly. This report contains a brief description of the canal, its history, future potential uses, conservation features, park developments, flood problems and so forth. The Commission recommended:

"It is recommended, therefore, that the State of Illinois take action to provide for the best use of the several reaches of the canal in conformity with the provisions of the Congressional Act of July 1, 1947, and that initial action consist of (1) providing for the solution of the legal problems relative to the State's title in the canal right-of-way and reserve strips, (2) authorization of a comprehensive topographic and hydrologic survey of the canal, (3) providing for the continuance to completion of the current boundary surveys and (4) appropriate funds to the extent of \$633,000 for the emergency rehabilitation of critical reaches of the canal and appurtenant structures."





## CHAPTER 17

### CONSTITUTIONAL PROVISIONS RELATING TO THE CANAL

**The Constitution of 1870:** The Illinois Constitutions of 1818 and 1848 contained no provisions relating to the canal. The Constitution of 1870, however, included the following provision:

"The Illinois and Michigan Canal or other canal or waterway owned by the State, shall never be sold or leased until the specific proposition for the sale or lease thereof shall first have been submitted to a vote of the people of the State at a general election, and have been approved by a majority of all the votes polled at such election. The General Assembly shall never loan the credit of the State or make appropriations from the treasury thereof, in aid of railroads or canals: *Provided* that any surplus earnings of any canal, waterway or water power may be appropriated or pledged for its enlargement, maintenance, or extension."

**Constitutional Amendment of 1908:** The above constitutional provision was amended by vote of the people in November 1908 so as to provide for the deep waterway in the Illinois River. A bond issue of \$20,000,000 was authorized for this work but there was no change in the status of the Illinois and Michigan Canal.

**Referendum of 1906:** The opening of the Chicago Drainage Canal in 1900 substantially ended the usefulness of the canal from Bridgeport to Lockport. The General Assembly, by House Joint Resolution in 1905, directed a referendum of the following question (abstract of resolution):

"Shall that portion of the Illinois and Michigan Canal and the ninety foot strips on each side thereof which lie northerly from the point where the northerly line of the present channel of the Sanitary District of Chicago crosses or intersects the said canal be sold at public vendue to the highest and best bidder?"

The above proposal was defeated at the general election of November 1906.

**Referendums of 1924 and 1926:** In 1923, the General Assembly proposed to lease the canal, or parts thereof, between Joliet and the eastern terminus at Bridgeport. The proposal was defeated at the general election of November 1924. A generally similar proposal was defeated at the general election of November 1926.

**The Referendum of 1954:** In the Sixty-eighth General Assembly, the question of amending the constitutional provisions

relating to the canal was again considered and the following Resolution adopted:

"House Joint Resolution No. 9

*Whereas:* The Illinois and Michigan Canal is no longer of value as a waterway and constitutes an unnecessary drain on the State's resources and a menace to health and safety; and

*Whereas:* Under the separate section of the constitution of this State, relating to waterways, the canal cannot be sold or leased unless the question of such sale or lease is submitted to a vote of the people at a general election and is approved by a majority of all votes cast at such election; therefore, be it

*Resolved:* *By the House of Representatives of the Sixty-eighth General Assembly of the State of Illinois, the Senate concurring herein,* that there shall be submitted to the electors of this State at the next election of members of the General Assembly, a proposition to amend the separate sections of the Constitution of this State, relating to canals and waterways, to read as follows:

"The Illinois and Michigan Canal or other canal or waterway owned by the State may be sold or leased upon such terms as may be prescribed by law. The General Assembly may appropriate for the operation and maintenance of canals and waterways owned by the State."

The above proposal was submitted to the voters at the general election of November 1954, and adopted.

**Proceedings of the Sixty-ninth General Assembly - 1955:**  
By Act approved June 24, 1955, the General Assembly instructed the Department of Public Works and Buildings to report, as follows:

"Section 2. The following named sums or so much thereof as may be necessary, respectively for the objects and purposes hereinafter named, are appropriated from the Illinois and Michigan Canal Fund to the Department of Public Works and Buildings for the operation and maintenance of the Illinois and Michigan Canal"——

"For the expense of conducting hearings, acquiring technical assistance, making studies and investigations, relating to problems which affect the proposed sale of the Illinois and Michigan Canal lands arising from the amendment approved in the general election November 2, 1954, and the enactment of the Federal legislation of Act of July 1, 1947 (61 U.S. Stat. at Large p. 237), these funds to be spent independently by the Department or in cooperation with other governmental agencies——  
\$10,000."

## CHAPTER 18

### THE CONSTRUCTION PERIOD

**Proceedings of the Ninth General Assembly, second session, 1835 - 1836:** On December 7, 1835, the Governor advised the General Assembly that a construction loan, based solely on a pledge of the canal lands and tolls, could not be secured. On January 9, 1836, a new law was enacted whereby the proposed loan was to be secured by the faith and credit of the State.

**Proceedings of the Canal Commissioners, 1836:** Pursuant to the Act of January 9, 1836, Governor Duncan appointed General Thornton, Colonel Hubbard, and William Archer as Canal Commissioners. The Board met at Vandalia, January 15, 1836, organized, and took steps to select an engineering corps. On February 22, 1836, William Gooding was employed as Chief Engineer. Engineering assistants were employed and the work of selecting and physically locating the canal route for construction purposes initiated. In June and October of 1836, some sections of the Summit and Western Divisions were placed under contract. During this year the Chief Engineer made new estimates of total cost for the canal, and his report for 1836 (appendix 35) shows an estimated cost of \$8,654,377, or more than twice the cost previously estimated by Bucklin. The Commissioners' report of 1836 (appendix 36) and the report of the Chief Engineer were transmitted to the Governor and presented to the General Assembly.

**General Features of Construction:** For convenience in planning, construction, and operation, the canal line was divided into three sections, known as the Summit, Middle, and Western Divisions. Each Division was further subdivided into sections of from 30 to 50 chains in length for contract purposes. The principal features of each Division are hereafter outlined.

**The Summit Division:** This Division of the canal consisted of the reach from the mouth of the Chicago River at Lake Michigan down the South Branch of the Chicago River to Bridgeport, and thence to Lock 1 at Lockport. In the first reach, construction was limited to the dredging of a boat channel in the bed of the river. In the second reach, from Bridgeport to Lock 1, construction consisted of excavation through earth and rock sections on a slope of one-tenth foot per mile to permit gravity flow of water from Lake Michigan through the canal. Design width of water surface was generally 60 feet, except in the vicinity of Lockport where special construction features were included. Here the canal was widened to 120 feet for one

mile to allow ample room for dockage and for possible future expansion of the canal. A hydraulic basin was constructed on the right bank of the canal, with access to the canal, to provide additional room for manufacturing firms desiring to utilize the water power to be made available by the construction of a tail-race connecting the canal and the Des Plaines River.

Construction of the canal disrupted the normal drainage pattern into the South Branch of the Chicago River, Portage Lake, and the Des Plaines River. To relieve the collection of storm waters behind the canal embankments, and to prevent intercepted streams from depositing silt in the canal, ditches were dug parallel to the canal which carried the intercepted water to prepared desilting reservoirs and thence into or across the canal by paved spillways.

First contracts for construction on the Summit Division were awarded on June 7, 1836 and construction was initiated on July 4, 1836 with a ceremony at Bridgeport.

**The Middle Division:** This Division of the canal consisted of the reach from the upper sill of Lock 1 at Lockport south to Joliet, where the canal crossed the Des Plaines River, then south and west along the right bank of the Des Plaines and Illinois Rivers to approximately mile 67, east of Seneca.

This Division of the canal was the last to be put under contract due to several factors. One was the indecision of the Commissioners as to the location of the most economical route through Joliet and across the Du Page River. Another factor was the heavy concentration of canal structures required in the Lockport-Joliet area and the delay in obtaining the requisite building materials and skilled labor. All questions were resolved and contracts were awarded in June 1838.

Under the original plan of construction, as conceived from 1836 to 1838, this Division of the canal was to receive its water supply from Lake Michigan, through the "deep cut" gravity flow plan for the Summit Division. Following the adoption of the "shallow level" cut in 1845, additional sources of water supply were required and the decision was made to construct two feeder canals, one from the Du Page River, and the other from the Kankakee River. As finally constructed, the canal line in the Middle Division contained the following major structures:

- (a) Eight lift locks, all 110 feet in length, 18 feet wide and of varying lift.
- (b) One guard lock at Dam Number 2 in Joliet.
- (c) Four dams, two of which were located in Joliet across the Des Plaines River, one across the Du Page River and one across the Kankakee River to furnish a source of water supply for the Kankakee Feeder.
- (d) Three aqueducts, two on the main line of the canal across the Aux Sable River and Nettle Creek, the

other across the Des Plaines River to carry the feeder canal from the Kankakee River.

- (e) Two canal basins, one at Joliet 200 feet wide and one and one quarter miles long, and one at Channahon 130 feet wide and one-half mile long.

Miscellaneous minor structures such as waste gates and weirs, stone and wood culverts to permit drainage, bridges, and so forth, were also required.

From the upper sill of Lock 1, at Lockport, the canal proceeded southerly through a series of four locks, each of ten foot lift, to the "Upper Basin" at Joliet. This "Upper Basin" was a slack water navigation pool formed by the confluence of the waters of the canal and the Des Plaines River backed up by Dam Number 1, located at what is now Jackson Street in Joliet. The canal crossed the Des Plaines River, upstream of this dam, to the west bank where Lock 5 (10 foot lift) was built into the right abutment of the dam. Passing through Lock 5, the canal entered the slack water pool formed by Dam Number 2, located at what is now Jefferson Street in Joliet. A guard lock (1.5 foot lift) was located in the right abutment of Dam Number 2. Below this dam, the canal proceeded south and west, separated from the river by a high towpath embankment. The canal line swung more westerly to Lock 6 (12 foot lift) located immediately upstream of the slack water navigation pool formed by the dam across the Du Page River at Channahon. Passing through this pool, the canal entered Lock 7 (4.5 foot lift) and proceeded southerly, passing the Kankakee Bluffs by means of a high towpath embankment separating the canal and the Des Plaines River. Proceeding westerly, past the confluence of the Des Plaines and Kankakee Rivers, the canal crossed the Aux Sable River aqueduct and entered Lock 8 (6 foot lift) at approximately mile 59. Leaving Lock 8, the canal proceeded south and west across the Nettle Creek aqueduct at Morris to its junction with the Western Division near Seneca.

In the reach of the canal from Lockport to Joliet, many small side streams were intercepted and introduced into the canal. The principal method of handling the excess water introduced in this reach in times of flood was by waste weirs and paved spillways which carried the water across the canal and into their natural course to the Des Plaines River. Below Joliet, the canal was sometimes dredged and sometimes built above the surface of the surrounding terrain. Major streams were crossed by means of aqueducts or slack pool navigation, while minor streams were routed under the canal by culverts or siphon culverts where the terrain demanded. In places where the canal intercepted the drainage, waste weirs were constructed to allow the excess water free outlet to the nearby Des Plaines and Illinois Rivers.

**The Western Division:** This Division of the canal commenced near the La Salle County - Grundy County line, east

of Seneca, at approximate canal mile 67, and ran south and west to the terminus of the canal at the Illinois River at La Salle. The survey on this section of the canal was carried out through the early summer of 1836 and construction contracts were awarded October 20, 1836.

As finally completed, this Division of the canal embraced the following major structures:

- (a) Seven lift locks, all 110 feet in length, 18 feet in width and of varying lift.
- (b) One lift lock (6 foot lift) of the same dimensions as above, on the Lateral Canal at Ottawa.
- (c) One guard lock, at the head of the Fox River Feeder above Ottawa.
- (d) Two aqueducts, one across the Fox River at Ottawa and the other across the Little Vermillion River near La Salle.
- (e) One dam, across the Fox River at Dayton to furnish water to the Feeder.
- (f) Two canal basins, one in Ottawa which was 100 feet wide and one mile long, the other in La Salle being a combination of canal boat basin located between Locks 14 and 15 and a steam boat basin located below Lock 15. A steam boat channel was also required connecting the steam boat basin to the Illinois River. This channel was 120 feet wide and one mile long.
- (g) One lateral canal three-quarter mile long and 90 feet wide in Ottawa.
- (h) One hydraulic basin in Ottawa one-quarter mile long and 120 feet wide at right angles to the lateral canal in Ottawa.

Miscellaneous structures such as waste weirs, overflow structures, culverts, and so forth, were also required.

The canal route, commencing at the juncture with the Middle Division, proceeded south and west to Lock 9 (10 foot lift) and Lock 10 (10 foot lift) near Marseilles. Continuing westerly, the canal passed over the Fox River aqueduct at Ottawa, through Lock 11 (10 foot lift) in Ottawa and Lock 12 (10 foot lift) located between Ottawa and the Buffalo Wide-water. Proceeding westward, the canal passed through Lock 13 (7 foot lift) near Pecumsagan Creek to the aqueduct over the Little Vermillion River near La Salle. From this point to the Illinois River, the canal passed through Lock 14 (13 foot lift) to the canal boat basin and on through Lock 15 (6 foot lift) to the steam boat basin and thence to the terminus of the canal at the Illinois River.

Drainage through this reach offered much the same problem as in the lower reaches of the Middle Division. The canal was carried over major streams by aqueducts, while other drainage was carried under the canal by culverts. In some areas the

terrain dictated the necessity of receiving the drainage into the canal proper which occasioned the utilization of overflow structures or waste weirs, as in the previous Divisions, to rid the canal promptly of the excess flow.

**The Feeder Canals:** From the inception of the canal, a major concern was an adequate water supply for all levels of the canal. Investigations and surveys were made of all possible feeders, beginning in 1830 and carrying on up to the adoption of the "shallow cut" plan in 1845. With the adoption of this plan, and the subsequent loss of Lake Michigan as a feeder, it became necessary to determine which of the many routes and sources, considered as feeders, would be the most feasible. After due consideration and study, the following water sources were selected and feeder canals constructed.

**The Calumet Feeder Canal:** Authorization for the construction of this feeder was first granted by the General Assembly in an Act entitled, "*An Act to amend an Act entitled, an Act for the construction of the Illinois and Michigan Canal*", approved January 9, 1836," approved and in force March 2, 1837. This Act stated:

"Sec. 4. Said board shall also as soon as convenient, authorize a survey and estimate to be made of the route of a canal, diverging from the main trunk of the Illinois and Michigan Canal, through the Aug-sau-ge-nash-ke Swamp and Grassy Lake, to intersect the Calumet river at the nearest practicable point, the said work to be constructed whenever the state of Indiana shall undertake a corresponding work connecting her system of internal improvement with the Illinois and Michigan Canal."

In compliance with the above authorization, a survey was made and a route determined. In 1839, the General Assembly again expressed its interest in the construction of the Calumet Feeder in an Act entitled "*An Act to amend the several laws in relation to the Illinois and Michigan Canal.*" This law, as approved and in force February 26, 1839, stated:

"Sec. 15. The Board of Canal Commissioners shall proceed to the construction of the canal diverging from the main trunk of the Illinois and Michigan Canal, through the Saganesh-kee swamp and Grassy Lake, to intersect the Calumet river at the most practicable point . . . whenever they shall be notified that the State of Indiana has commenced the construction of a corresponding work to connect her system of internal improvements with the Illinois and Michigan Canal; and the cost of such construction shall be paid out of the canal funds . . . The said canal (feeder) shall be deemed and considered as part and parcel of the Illinois and Michigan Canal, and the laws and regulations adopted with reference to the construction thereof, the duties of canal commissioners, the making and executing contracts, shall be held and deemed applicable to the canal directed to be constructed by this Act."

No construction was ever undertaken by the State of Indiana to tie her system of canals to the proposed Calumet Feeder Canal. In 1845, the Trustees decided to proceed with construc-

tion of the Calumet Feeder Canal. The proposed route was re-surveyed in the summer of 1845, and construction contracts awarded the following May. Construction was commenced on a twelve foot high dam across the Little Calumet River at the present site of the town of Blue Island. Construction work was completed in the late winter of 1848-1849 and the feeder went into operation with the opening of the 1849 season.

As constructed, the feeder was 16.8 miles in length, extending from the dam on the Little Calumet River at Blue Island westward to join the Illinois and Michigan Canal at approximate canal mile 18, above Lemont. Dimensions were 40 feet wide at water surface, 26 feet wide at base, and four foot depth, with a three foot freeboard. A guard lock was installed at the head of the feeder to insure protection to the feeder from excessive flows on the Little Calumet River.

**The Du Page River Feeder:** The Du Page Feeder was constructed by the Canal Commissioners under the authority granted them in an Act entitled "*An Act for the construction of the Illinois and Michigan Canal*," approved and in force January 9, 1836. This Act granted the following authority to the Canal Commissioners:

"Sec. 20. They shall have full power and authority in their good judgment to do, in relation to the construction and completion of the said canal, all things not otherwise herein provided for . . .

Sec. 21. It shall be lawful for them to enter upon and use any lands, water, streams and materials of any description necessary for the prosecution of the works contemplated by this Act."

Proceeding under the authorization granted above, construction was begun on a low dam across the Du Page River in Sec. 33, T35N, R9E, to divert water into the feeder. In conjunction with the dam, a high earth embankment was constructed along the left bank of the Du Page River, above the head of the feeder, to prevent high water flows on the Du Page River from crossing the natural divide at this point and flowing down Rock Run.

The feeder, as constructed, was approximately one-quarter mile long and 100 feet wide, extending from the dam across the Du Page River to approximate canal mile 42 above Channahon. This feeder furnished water to the Channahon level, extending from the guard lock in Dam Number 2, at Joliet, to the upper sill of Lock 6, at Channahon.

**The Kankakee River Feeder:** Authorization for the construction of this feeder was contained in Section 13 of an Act entitled "*An Act to provide for the completion of the Illinois and Michigan Canal, and for the payment of the canal debt*," approved and in force February 21, 1843, which said in part:

"Sec. 13. They are hereby authorized to make such changes and alterations of the original plan of said canal as they may deem advisable without reducing its present capacity, or materi-



ally changing its present location, having regard due to economy, permanency of work, and an adequate supply of water at all seasons."

Surveys were initiated in July 1845, and construction contracts were awarded in May 1846. Construction was begun on a seven foot dam across the Kankakee River in Sec. 9, T33N, R9E, near Goose Island. The feeder proceeded westward a distance of four and one-half miles, crossing the Des Plaines River by means of an aqueduct 330 feet in length, and emptied into the Illinois and Michigan Canal at approximate canal mile 47. Dimensions were the same as those of the Calumet Feeder. A guard lock was installed to protect the feeder from excessive flood flows on the Kankakee River.

The purpose of this feeder was to supply water to the Dresden Level of the Illinois and Michigan Canal, which extended from the lower sill of Lock 7 at Channahon to Marseilles. Construction of this feeder was completed in time for the opening of the canal in 1848.

**The Fox River Feeder:** Authorization for the construction of this feeder was given by the General Assembly in "*An Act to amend an Act entitled an Act for the Construction of the Illinois and Michigan Canal*, approved January 9, 1836." Section 8 of said Act stated:

"Sec. 8. The said commissioners shall construct a navigable feeder from the best practicable point on Fox River to the Illinois and Michigan Canal at the town of Ottawa, and such basins or lateral canal, connecting the Illinois river with said canal at that point, as in their opinion will most enhance the value of the property of the State."

The General Assembly later amended the above Act, and provided:

"In the construction of the navigable feeder and lateral canal at Ottawa, the canal commissioners may so alter the plan heretofore prescribed, as to connect the said feeder or lateral canal with Fox River, instead of the Illinois River, or make any change which in their judgment may be best calculated to enhance the value of State property, and the usefulness of the canal."

Proceeding under the authorization granted above, surveys of the feeder route were initiated in 1837 and construction contracts awarded on November 13, 1837. A dam and guard lock were constructed at the head of the Fox River rapids at Dayton. The feeder extended southwesterly four and one-half miles to join the Illinois and Michigan Canal in Ottawa. Dimensions were the same as those of the Calumet and Kankakee feeders.

The feeder was essentially completed by 1842 and used locally. With the opening of the main canal in 1848, the Fox River Feeder was complete and in full operation.

In conjunction with the feeder canal at Ottawa, a lateral canal was constructed on the south side of the Illinois and Michigan Canal to furnish water power and access for industry

to the canal. The lateral canal was approximately one-half mile long and 60 feet wide, and was built at right angles to the main canal. At the southernmost end of the lateral canal, a hydraulic basin 120 feet wide and 800 feet long was constructed at right angles to, and east of, the lateral canal. A 6 foot lift lock was required at the entrance to the lateral canal. Water power was obtained by virtue of an approximate 30 foot drop from the hydraulic basin to the Fox and Illinois Rivers.

**Proceedings of the Eleventh General Assembly, second session, 1839 - 1840:** The Canal Commissioners, on December 10, 1839, made their annual report to the Governor. The physical status is shown by the engineers' report (appendix 42). At this time, the financial problem had grown so acute that the Commissioners resorted to issuing post-dated checks in an attempt to prevent total collapse of the work of construction. On January 4, 1840, at the request of the General Assembly, the Commissioners reported on the damage that would follow the total suspension of operations. The General Assembly, by Act of February 1, 1840, reduced the engineering force on the canal and virtually made provision for suspension of the work.

**Proceedings of the Twelfth General Assembly, 1840 - 1841:** On November 26, 1840, in his message to the General Assembly, the Governor reviewed at length the embarrassed financial condition of the State because of the burden of loans negotiated for internal improvements. He recommended that sufficient canal land be sold to pay the interest on the canal debt.

The Commissioners' annual report for 1840 and the Chief Engineer's report (appendix 43) were transmitted to the Governor and General Assembly. In the Senate, the Committee on Canals and Canal Lands was instructed to inquire into the available means of the Canal Fund and the ability of the State to complete the work. This Committee, on January 8, 1841, reported (appendix 44) and urged that the General Assembly take some action to assure the completion of the Canal.

The General Assembly enacted several laws relative to land sales, settlement of claims, and so forth, but took no positive action towards completion of the canal.

**Proceedings of the Thirteenth General Assembly, 1842 - 1843:** In his message of December 8, 1842 (appendix 45), Governor Ford reviewed the canal problem and recommended that the laws be revised so as to proceed on the "shallow cut" plan. The annual report of the Commissioners for 1842 and the report of the Chief Engineer (appendix 46) both show that adoption of the "shallow cut" plan was inevitable if the canal were to be completed. The Senate Committee on Canals and Canal Lands reported on January 5, 1843 (appendix 47) and recommended that a trust be established. All canal property and tolls would be conveyed to Trustees.

*"An Act to provide for the completion of the Illinois and*

*Michigan Canal, and for the payment of the canal debt*" was passed and approved February 21, 1843 (appendix 48). This law provided for a Trusteeship and a further loan of \$1,600,000 or the amount estimated as needed to complete the canal on the "shallow cut" plan.

Several other laws relating to the canal were enacted at this session. These mainly relate to clearing up outstanding claims. By Act approved March 2, 1843, however, the Office of Commissioners was abolished, the Acting Commissioner alone being retained. The Secretary was retained, and one Engineer retained to settle contractor accounts. The Acting Commissioner was authorized to employ an agent to prevent trespass on canal lands.

**Proceedings of the Fourteenth General Assembly, 1844-1845:** During the years 1843 and 1844, negotiations were in progress to secure the added loan of \$1,600,000. The European banking houses of Messrs. Baring Brothers and Company and Magniac, Jardine and Company, represented the European bondholders. These firms authorized Captain William Swift, an Engineer, and the Honorable John Davis to visit the canal and make detailed report on all phases of the project. These gentlemen made full report to the above firms and stated that the canal could be completed on the "shallow cut" plan for an additional \$1,600,000. On June 25, 1844, the European bondholders stated that they would underwrite a further loan of \$600,000 with the American bondholders to accept the balance of \$1,000,000. A trust was to be created and all canal lands and property conveyed to the Trustees by trust deed. By Act approved March 1, 1845 (appendix 49), the Act of February 21, 1843 was amended to comply with the wishes of the proposed Trustees. The Governor was authorized to, and did, convey the canal assets to the Trustees.

**Proceedings of the Twenty-eighth Congress, second session, 1844-1845:** Efforts had been made in the Twenty-seventh Congress, third session, to secure a further land grant for the canal. These efforts were renewed in the Twenty-eighth Congress, second session. The report of the Committee on Public Lands and a proposed bill (appendix 50) reflect the considerations in Congress at the time. The proposed bill provided for a further grant of 500,000 acres of land. An interesting feature of this bill provided that the State could not select the alternate sections "already reserved by the United States on the line of said canal."

**Proceedings by the Board of Trustees, 1845-1848:** An election of Trustees was held in New York on May 27, 1845. William Swift and David Leavitt were elected as Trustees by the subscribers to the loan, and Jacob Fry was appointed by the Governor as State Trustee.

On June 18, 1845, the Trustees met at Chicago and con-

ferred with Governor Ford. On June 24, 1845, William Gooding was employed as Chief Engineer. An engineering staff was assembled and work started to complete the Summit Division of the canal on a level some eight feet above that of the original "deep cut" plan. On August 25, 1845, some of the work was put under contract. The status of the work done in 1845 is shown by the report of the Chief Engineer for 1845 (appendix 51).

During 1846 and 1847, the work was advanced and on April 23, 1848 the first boat to make the full trip from La Salle to Chicago passed through the canal. On May 6, 1848, the construction organization was disbanded and replaced by a maintenance and operating organization.

## CHAPTER 19

### SUBSEQUENT AND RELATED CONSTRUCTION, 1848 - 1933

**The Deep Cut Plan:** Following completion of the Illinois and Michigan Canal in 1848, no construction was required outside of normal maintenance along the canal line. By the eighteenthies, the City of Chicago was suffering from a severe sanitation problem. In times of excessive rainfall and runoff, flood flows from the Des Plaines River would cross the divide at Summit and, following the old bed of Mud Lake, flow into the South Branch of the Chicago River, reversing the flow of that river into Lake Michigan. The accumulated sewage and garbage would be swept into the lake, fouling the water intakes for Chicago's water supply. In addition, the accumulated sewage in the Chicago River and the South Branch of the Chicago River created a serious health hazard as a source of disease and contagion. In an effort to alleviate the situation, the General Assembly passed an act entitled "*An Act to provide for the completion of the Illinois and Michigan Canal upon the plan adopted by the State in 1836,*" approved February 16, 1865, in force April 16, 1865. This Act provided that the City of Chicago could, at its own expense, deepen the Summit Level of the canal eight feet to the original "deep cut" gravity flow from Lake Michigan plan, thus insuring the city of a constant drain for its sewage. Construction on this plan commenced in the late fall of 1865, after the close of the canal season, and was carried on in the off seasons of succeeding years until completion in 1871.

Construction of the "deep cut" called for the removal of the lock on the Summit Level south of Romeo. However, a guard lock was installed at Bridgeport to replace the old lift lock located there. The pumping works at Bridgeport were no longer required now that a gravity supply of water for the canal was available. The works were dismantled and the pump house used for storage. The need for the Calumet Feeder was also out-dated, and, in March 1874, the General Assembly passed a bill entitled "*An Act to authorize the removal of the feeder dam across the Calumet River near Blue Island, in Cook County, in the State of Illinois, etc.*" Said dam was removed in 1874 and the Calumet Feeder abandoned as a source of water supply for the Summit Level of the canal.

With the continuous water supply guaranteed by the construction of the "deep cut," the need for the Du Page River Feeder was also outgrown and it gradually was abandoned. The Kankakee River was no longer required as a source of water supply, but the Kankakee Feeder functioned as a lateral canal

connecting the Kankakee River and the Illinois and Michigan Canal until 1888 when the aqueduct was removed.

**Chicago Sanitary and Ship Canal:** By 1881, it had become evident that the "deep cut" was totally inadequate, of itself, to remove the accumulated sewage of the City of Chicago. In efforts to relieve unsanitary conditions prevailing both in Chicago and along the canal line as far as Joliet, the City of Chicago was authorized to re-establish a pumping station on the canal at Bridgeport. The additional water, pumped from the South Branch of the Chicago River at Bridgeport, proved partially effective in dispersing the sewage but effective relief was not obtained. Finally, in July 1889, a bill entitled "*An Act to create Sanitary Districts and to remove obstructions in the Des Plaines and Illinois Rivers*" was passed by the General Assembly. Under the provisions of this Act, the Sanitary District of Chicago was formed in January 1890 and the planning and construction of the Chicago Sanitary and Ship Canal initiated. This canal was constructed parallel and adjacent to the northerly side of the Illinois and Michigan Canal. Construction was completed to the dam and controlling works at Lockport and water turned in by January 2, 1900. The reach of the Chicago Sanitary and Ship Canal from Lockport south to Joliet was completed on September 30, 1901 and junction was made with the Illinois and Michigan Canal in the "Upper Basin" at Joliet above Dam Number 1. Opening of the Chicago Sanitary and Ship Canal lowered the water elevation of the Illinois and Michigan Canal to an almost inoperable depth. Efforts were made to keep the canal in operation, but in 1904 the pumping work at Bridgeport ceased as a result of the "*Burke v. Snively*" case, and use of the canal from Joliet to Bridgeport was discontinued as an artery of traffic. The main function of this reach of the canal from 1904 to the present has been to handle local drainage, particularly in the Lockport-Joliet area.

The Illinois and Michigan Canal from Joliet to LaSalle continued in operation, carrying traffic between LaSalle and Joliet. At Joliet the traffic entered the Chicago Sanitary and Ship Canal continuing on to Chicago.

**The Illinois Waterway:** Considerable interest had been expressed for the construction of a deep waterway to be constructed along the beds of the Des Plaines and Illinois Rivers to connect Lake Michigan and the Mississippi River. With the construction of the Chicago Sanitary and Ship Canal, the demand grew greater and finally culminated in the passage of a bill entitled "*An Act in relation to the construction, operation and maintenance of a deep waterway from the water power plant of the Sanitary District of Chicago at or near Lockport to a point in the Illinois River at or near Utica, and for the development and utilization of the water power thereof*," approved June 17, 1919. Passage of this Act assured a navigable waterway ex-

tending from Chicago to Utica, where it joined the channel constructed by the Federal Government extending to the Mississippi River.

The Illinois and Michigan Canal from Joliet to LaSalle was completely rehabilitated in the years 1918-1919 with the aid of Federal funds as part of the war effort of World War I. In the period following the war only minimum maintenance was done on the canal. With the completion of the Illinois Waterway in 1933, use of the Illinois and Michigan Canal was discontinued as an artery of traffic, being maintained only as a means of controlling local drainage interrupted by the original construction of the canal.





## CHAPTER 20

### DRAINAGE AND MAINTENANCE

**Method of Handling Intercepted Drainage:** Prior to the construction of the Illinois and Michigan Canal, extensive consideration was given to the selection of the most practical and economical route to be followed. Of primary importance in the selection of the route was the question of providing for the natural surface drainage encountered. The drainage landward of the canal from the Des Plaines and Illinois Rivers was intercepted, and therefore it became the obligation of the canal to make provisions to supplant such natural watercourses where the canal blocked or interfered with the natural drainage. Based on considerations of topography, runoff, and ease of construction, three methods of handling the drainage were devised:

- (a) The drainage was accepted into the canal.
- (b) The drainage was routed under the canal by culverts.
- (c) The canal was carried across the natural streams by aqueduct.

A discussion of each method follows:

(a) Where the intercepted drainage was accepted into the canal, it was handled in one of two ways. One, it was carried along the canal as an addition to the normal flow, or two, the water was carried across the canal and discharged over a paved spillway opposite its point of entrance into the canal. To handle excess flows introduced in times of high flow from the tributary streams, additional waste weirs and gates were installed along the canal, usually at a point of lockage with the lock serving as a water elevation control structure. A few of the streams introduced into the canal are Long Run, Big Run, Fraction Run, and Milne Creek, all in the Lockport-Joliet area; and Carson Creek, Higbee Run, and Pecumsaugan Creek in the Joliet-LaSalle reach.

Introduction of these streams into the canal created a serious problem in that the original canal construction did not make adequate provision for the handling of excessive flood flows. The following excerpts from the annual reports of the Canal Commissioners and the annual reports of the Division of Waterways illustrate the problems created:

General Superintendent's Report—1849

"From Aux Sable to LaSalle, a distance of 44 miles the injuries sustained were from deposits brought into the canal at various points by the overflow of streams, amounting to 5,000 cubic yards, and the raising up of the bottom of the Pecumsaugan Aqueduct sixteen (16) inches."

## General Superintendent's Report—1850

"It will be seen that two (2) breaks producing serious interruption to the navigation of the canal have occurred during the past season. One on the morning of the 19th of August and the other on the evening of the 20th of August. Both occurred near Morris upon the 22 mile level. The first break was through the towpath and was comparatively not so serious, that is to say, about 100 feet in length of the bank was washed out to a depth of 4½ feet below the bottom of the canal requiring about 8,000 cubic yards of material to repair it. . . . The level upon which this break occurred is 22 miles long and for about one-third of this distance at the upper end the drainage of the country is received into the canal."

## General Superintendent's Report—1877

"At Willow Springs and Mount Forrest the breaks into the canal were very serious, each being from one to three hundred feet in width, and in some places the full depth of the canal."

## Division of Waterways Report—1942

"During the year 1942 the emergency repair work of the Illinois and Michigan Canal was particularly heavy because of the unusual amount of rainfall during the Spring and Fall. One particularly bad break in the towpath was four and one-half miles south of Joliet where ninety-two feet of bank completely collapsed, necessitating the evacuation of seven families from that area."

Throughout the year one hundred and two emergency repairs were necessary and five permanent repairs were completed."

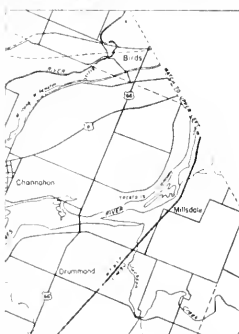
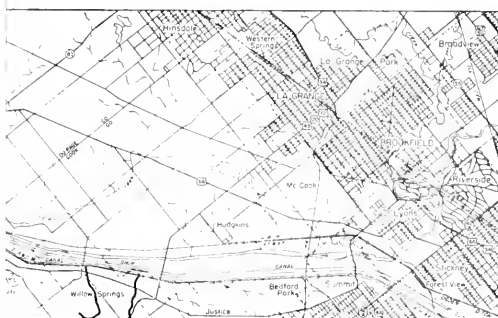
## Division of Waterways Report—1948

"The spring rains, two of them of flood proportions, damaged the structures along the canal from Lockport through Utica to the point where nothing short of a major project will rehabilitate it."

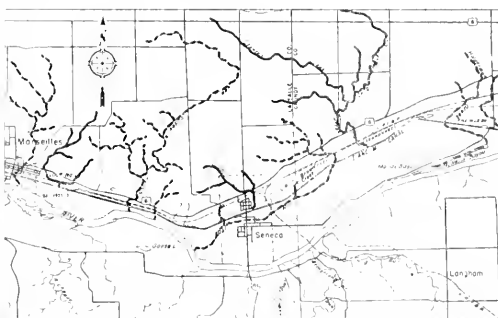
"At Lockport the levee on the west bank of the canal broke through in six places as did the west bank opposite Fraction Run Bridge south of Lockport."

An examination of the above quoted items, and of other reports, supports the conclusion that the canal has been subject to damage from flood flows from tributary streams ever since its construction up to the present day. It can be seen on the accompanying map (exhibit 9) that the areas most frequently subject to damage through the years were those in the reach from the Calumet Feeder to Joliet and in the Aux Sable to Seneca reach. It is in these areas that most of the tributary drainage is accepted into the canal.

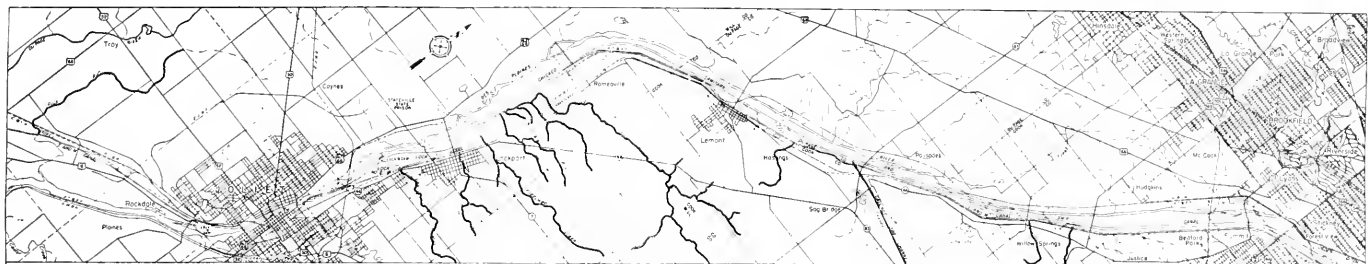
During the years when the canal was operated as a transportation artery, funds were made available from earnings of the canal to maintain a channel to handle transportation and to facilitate the removal of drainage water. At the present time, however, maintenance work of such magnitude cannot be accomplished due to lack of sufficient funds. Considerable silting has occurred through the years, altering the condition of the canal channel so that at the present time the channel section is not large enough to handle the flash floods emptied into the canal.



To accompany Documentary History  
of  
THE ILLINOIS & MICHIGAN CANAL  
Exhibit 9

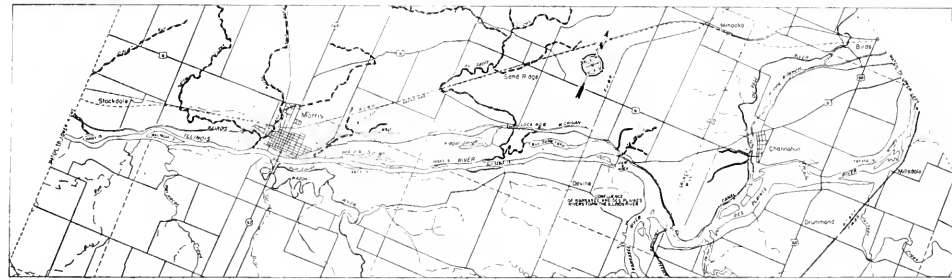


DRAINAGE MAP OF  
ILLINOIS and MICHIGAN CANAL

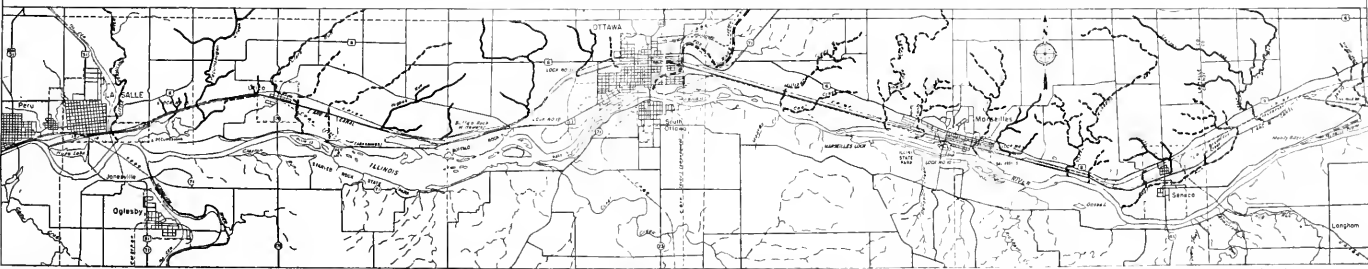


LEGEND

- Drainage into Canal
- - - Drainage under Canal



To Assembly, Documentary History  
THE ILLINOIS & MICHIGAN CANAL  
Exhibit 9



Aside from small maintenance projects which provide only temporary relief at isolated locations on the canal, the major drainage problem remains unsolved.

(b) Where the intercepted surface drainage was routed under the canal by means of culverts, drainage and maintenance problems of a different type arose. There were twenty culverts installed along the canal in the reach from Joliet to LaSalle, seven of which were constructed of stone and thirteen of wood. One of the culverts was abandoned in 1849 but the remainder are in the same approximate location today. The accompanying map (exhibit 9) shows the streams and locations of the culverts under discussion. Some of the major streams carried under the canal by culverts are Clark's Run, Milliken Creek, Walbridge Creek, North Kickapoo Creek, Rat Run, Holderman Creek, O'Brien Run, and Dresden Run.

The culverts, when constructed, were fairly effective except in times of excessive runoff, when the culvert opening was insufficient to carry the flow. On these occasions, the water would pile up behind the culverts, flooding adjoining fields and causing deterioration of the canal embankment. The following excerpts from the annual reports of the Canal Commissioners and the annual reports of the Division of Waterways illustrate some of the types of maintenance required for these structures:

Engineer's Report—1866

"On the 16th of April a break occurred in the top of a stone culvert near Seneca which delayed navigation 9 days and was repaired at a cost of \$1,499.87."

General Superintendent's Report—1877

"The culvert one mile east of Aux Sable has been faced in the arch with 12 x 12 inch timber in a substantial manner. The lining of Kickapoo culvert has been extended at each end so that it is now in a safe condition."

General Superintendent's Report—1888

"The culvert three miles east of Ottawa, known as 'Bell's Culvert', originally built of sandstone, was found unsafe from decay, and was dug out and rebuilt during last winter."

General Superintendent's Report—1898

"The removal of the old sandstone culvert in Marseilles and the construction of a much larger steel culvert in its stead. The use of steel in a culvert this size (16 feet in diameter) was an innovation in this class of work on the canal. Its use, however, was almost a necessity at this point. The principal trouble with the old culvert was its size, it being too small to pass all the water coming down to it in times of freshets, causing backwater, which has many times in years gone by inflicted thousands of dollars of damage to the property of the citizens of Marseilles, etc."

Division of Waterways Report—1942

"Most all of the culverts had to be cleaned during the year and O'Brien's Run Culvert, downstream from Morris, completely collapsed, necessitating an entirely new structure."

Division of Waterways Report—1950

"... a new culvert was constructed at Holderman Run between Morris and Seneca. In addition, new culverts at O'Brien Run and Dresden Run were placed under contract."

In addition to the excerpts given here, there are numerous references in previous reports of flooding and maintenance problems caused by the culverts under the canal. As was the case in the preceding sections, maintenance of the culverts and their channels is handicapped by a lack of ready funds. Maintenance is confined to emergency relief and repair but no overall plan of improvement has been undertaken.

(c) The larger streams along the canal route were crossed by aqueducts. Placement of the aqueducts to provide sufficient waterway openings for the streams and still maintain design gradient of the canal, controlled the location of the canal route from Joliet to LaSalle. Aqueducts were required for the Little Vermilion River, the Fox River, Nettle Creek and the Aux Sable River.

The construction of the aqueducts did not create so much a problem in drainage as in maintenance. Due to the excessive wear on the abutments and piers from the flood waters of the streams crossed, and to the enormous stresses set up by the weight of the water carried by the aqueducts, maintenance demand was continuous. The following excerpts illustrate the problems and extent of maintenance required:

General Superintendent's Report—1877

"The masonry in the abutments and piers of the Fox River aqueduct has for several years given evidence of decay, and it was found that important repairs must be made, or the structure would fail. After the water was drawn off in 1876, a careful examination showed that the masonry in the abutments must be repaired, as the face stone had become so much decayed as to fall to pieces. The work of taking down the face stone and rebuilding the same with new stone, was immediately commenced and prosecuted with energy, when the weather would permit."

"The trunk of the Nettle Creek aqueduct at the city of Morris had so far failed as to require rebuilding, and the material was provided, framed, and delivered on the ground before the close of navigation, and is now being raised."

General Superintendent's Report—1886

"After the close of navigation for 1885 the work of rebuilding the abutments and wing walls of the Aux Sable aqueduct . . . was commenced. The slope walls of the Nettle Creek aqueduct being in bad condition, were rebuilt."

General Superintendent's Report—1889

"After the close of navigation for the season of 1888, the renewal of Nettle Creek aqueduct at Morris was commenced, and completed early in February following."

General Superintendent's Report—1890

"Since my last report, the aqueduct across Fox River at Ottawa has been rebuilt; also a large portion of the east abutment under same."

General Superintendent's Report—1891

"After the close of navigation for 1890, the aqueducts over the Aux Sable Creek and Little Vermilion River were rebuilt, also a large portion of the masonry on which they rest, thus completing the renewal of all the aqueducts on main canal."

## General Superintendent's Report—1898

"The old aqueduct over Nettle Creek, below Morris, was taken out and an entirely new structure put in its place."

## General Superintendent's Report—1901

"The aqueduct over the Fox River at Ottawa, the most extensive and expensive structure of its kind on the canal, was completed early in the winter."

"The timbers for the aqueduct at LaSalle, over the Little Vermilion River, and for the aqueduct over Aux Sable Creek, about six miles east of Morris, have been purchased and the work of construction will be begun this month."

## Division of Waterways Report—1947

"On April 4, 1947, extensive flooding was caused by heavy rains throughout areas served by the Canal which required constant attention to prevent damage to the Canal and its structures. However, in spite of all efforts several large breaks and numerous smaller ones developed which washed away the canal banks and in several cases even the towpath; the most serious damage being done when the west wing wall and waste gate structure of the Nettle Creek Aqueduct collapsed."

It can be readily seen that the maintenance of these aqueducts has been a continuous and constant drain on the canal resources. The aqueduct piers and abutments have been rebuilt repeatedly, and in efforts to conserve and lengthen the life of the aqueducts, the old wooden troughs have been replaced by steel and concrete troughs.

In addition to the drainage and maintenance conditions and problems mentioned above, there was also the problem of maintaining other appurtenant structures on the canal and its feeders. The dam at Channahon was rebuilt several times, as was the dam at Dayton on the Fox River. The Kankakee Feeder aqueduct required the same type of maintenance as those mentioned until its removal in 1888. Canal bridges required constant care as did the waste gates, waste weirs and other control structures.





## CHAPTER 21

### PRESENT PHYSICAL CONDITION

**General Condition of Structures:** Although the Illinois and Michigan Canal has not been used as a commercial waterway since 1933, the canal and canal structures have been maintained as funds have permitted. Following is a report on the canal and its structures. The station references are to the canal survey of 1936.

**Reach No. 1, Santa Fe Slip in Chicago to Lemont:** This reach of the canal is in fair condition. From Oakland to Western Avenue, the canal is occupied by the Chicago Package Freight Terminal. From Western to California Avenue the old canal section is evident, and is being used in part as a parking area. Several areas of the canal are being used as junk yards and trash dumping areas. At Station 274+00 the canal embankment is breached and a portion of it has been removed. At numerous locations the canal is choked with weeds, brush and trash. In the vicinity of Station 746+20, there is a sand bar extending the width of the canal. The canal in this reach is used only for local drainage.

Station	Type of Structure	Condition of Structure
274+00	Embankment	The canal embankment was breached and a portion of it has been removed.
298+00	Pipe Line Crossing	New construction.
345+50	Private Footbridge	This footbridge is in a deteriorated condition.
370+40	Open Ditch Across the Canal	The pipe ends at the water's edge on each side of the canal. The discharge from one pipe is directed into the other pipe by two embankments across the canal, and a ditch.
479+50	Pipe Crossing	Good condition.
528+00	36-inch Diameter Pipe Crossing and Private Footbridge	This bridge is weathered but serviceable.
540+00	Earth Dam	There is an earth dam across the canal with no visible opening to provide for canal flow.
552+70	Earth Dam	Each earth dam has a 36-inch corrugated metal pipe through it which provides for canal flow.
570+90	Earth Dams	

633+00	Side Channel	This side channel which drains into the canal is choked with weeds and brush.
644+70	Footbridge	Immediately downstream of La Grange Road there is a wooden footbridge across the canal. This footbridge is in poor condition.
746+20	Sand Bar	There is a sand bar extending the width of the canal.
757+80	Footbridge	There is an abandoned footbridge of the type built by the CCC. It is in a deteriorated condition.
820+10	Footbridge	There is an abandoned footbridge of the type constructed by the CCC. It is in a deteriorated and hazardous condition.
907+20	Rock Dam	There is a deteriorated rock dam or weir across the canal.
933+00	Earth Dam	There is an earth dam across the canal. Two 36-inch diameter corrugated metal pipes provide for flow of the canal.
946+20	Earth Dam	There is an earth dam across the canal, which is used for vehicle traffic. Three pipes, each with a diameter of 30 to 36 inches provide for the flow of the canal. This earth dam is in good condition.
	Guide Wall at the Junction of the Canal and the Calumet Sag Channel	The structure is in good condition although the ends of the handrail across the I. & M. Canal have been washed out.
954+25	Weir	This weir across the canal is in good condition.
973+55	Earth Dam	There is an earth dam across the canal. Two 30-inch diameter corrugated metal pipes through the dam provide for flow of the canal. The pipes are open and clear.
1040+65	Cable Ferry	The cable ferry across the canal is in good condition and is still being used.
1052+74	Cable Footbridge	The cable footbridge across the canal is in good condition.
1059+47	Footbridge	All that remains of this abandoned footbridge are the abutments.

**Reach No. 2, Lemont to Joliet:** This reach of the canal is in fair condition. There are numerous areas along the canal where trash has been dumped into the canal. From Station 1319+00 below the Pure Oil Refinery to approximately Station 1680+00 (lock Number 4) there is oil on the water. In general, the side slopes and the towpath of the canal are in

good condition. There are several creeks which discharge into the canal, among which are Milne Creek, Fraction Run, Big Run, and Long Run.

Station	Type of Structure	Condition of Structure
1131+40	Steel Road Bridge	Bridge is in good condition.
1136+00	Pipe Crossing	
1270+50	Pipe Crossing and Water Control Structure at Globe Refinery	
1319+29	Footbridge	The only remains are the piers and abutments.
1369+67	Footbridge	All that remains are the stone piers and abutments.
1508+00	Bridge	The only remains are the stone piers and abutments.
	10th Street Bridge	Bridge is in good condition.
1547+25	Footbridge	All that remains are the stone piers and abutments.
1551+20	13th St. Overflow	The road is in good condition. Some washout of riprap has been noted along the upstream side of the roadway.
1561+00	Lock Number 1	The gates are missing and the walls are in a very deteriorated condition.
1618+00	Lock Number 2	The lock is in a very deteriorated condition. Most of the lock wall has fallen into the canal.
1674+60	Lock Number 3	The gates are missing and the walls are in a deteriorated condition.
1680+00	Lock Number 4	The gates are missing and the lock walls are in fair condition.

**Reach No. 3, Joliet to Channahon:** The location of the Illinois and Michigan Canal through the City of Joliet is occupied by the Illinois Waterway. From Joliet to Channahon the canal is in fairly good condition. However, there are occasional dumping areas along the canal. The towpath between these points is not in a condition which will permit vehicular traffic. The Minooka Widewater is located in this reach of the canal, forming a lake approximately two miles in length with a width of from four to six hundred feet. The canal through Channahon is in very good condition. In addition to the ninety foot reserve on each side of the canal, an area of approximately six acres has been made into an attractive park.

Drainage in this reach is confined to local drainage, the only major creek emptying into the canal being Rock Run. The Du Page Feeder is used only for local drainage.

Station	Type of Structure	Condition of Structure
1874+00	Junction Lock (Lock No. 5)	There are no visible signs of leakage or seepage through the upper gates of the Junction Lock. The lock is in very good condition. The bottom adjacent to and upstream of the gates has either silted up heavily or been filled to keep the gates from leaking.
1872+00	Chicago, Rock Island and Pacific Railroad Bridge	The bridge is in good condition.
2049+00	Earth Dam	This earth dam is partially washed away.
2051+28	Five Mile Bridge	This bridge is in good condition.
2366+00	Waste Gates and Footbridge	The sidewalls of the waste gates are weathered, and there appears to be considerable leakage occurring in the lower part of the guide for the gates. The footbridge across the gates is in good condition.
2372+25	Concrete Spillway and Footbridge	The spillway and footbridge are in good condition.
2375+60	Lock Number 6	The lock is in good condition. A concrete wall with provisions for regulating the flow of water has been constructed across the upper end of the lock.
2380+00	Diversion Dam (Channahon Dam)	The dam is in good condition.
2384+00	Lock Number 7	The lock gates are rotting near the waterline and are leaking slightly. The footbridge over the lock and waste gate adjacent to the lock are in good condition.

**Reach No. 4, Channahon to Morris:** The canal is in fairly good condition in this reach. There is some debris and dumpage in the canal which is usually found near bridge structures. At Station 3096+00, the fill for a private footbridge is blocking approximately one-half of the canal. The section of the canal and towpath between Channahon and McKinley Woods is in very good condition. Near the point where the old Kankakee Feeder entered the canal is a tract of land, approximately fifteen acres, lying between the canal and the Des Plaines River. This area has been developed by constructing a custodian's house, park area, picnic shelter, privies, a well, and picnic tables.

Most of the drainage into the canal is local. The Kankakee Feeder aqueduct across the Des Plaines River has been removed.

Station	Type of Structure	Condition of Structure
2537+00	McKinley Woods State Park Vehicle Bridge	This bridge is in good condition.

Station	Type of Structure	Condition of Structure
2561+27	McKinley Woods Spillway and Vehicle Bridge	The bridge and spillway are in good condition. The roadway at the southeast corner of the bridge is starting to erode.
2672+00	Dresden Run Culvert	This culvert is in good condition.
2784+60	Stone Arch Culvert	This stone arch culvert is lined with a corrugated metal pipe and is in good condition.
2815+12	Spillway and Deck Bridge	The structure is in good condition.
2815+50	Footbridge and Aux Sable Creek Aqueduct	These structures are in fair condition.
2822+00	Lock Number 8	The lock gates are leaking badly. The walls of the lock are in good condition. The footbridge over the lock is in fair condition. The waste gate of the by-pass channel is deteriorating.
2832+35	Spillway and Deck-bridge	This structure is in good condition.
3028+25	Wooden Box Culvert	The culvert is in fair condition.
3096+00	Private Footbridge	This bridge is in poor condition.
3116+34	Cedar Street Foot-bridge	This bridge is in poor condition.
3118+00	Route 47 Highway Bridge	This bridge is in good condition.

**Reach No. 5, Morris to Marseilles:** In general the canal in this reach is in rather poor condition. The section between Waupecan Island Spillway and the mouth of Carson's Creek has recently been dredged and is in very good condition. The towpath in the reach is in good condition and is open to vehicular traffic. Drainage into the canal is confined to local drainage and to Carson Creek.

Station	Type of Structure	Condition of Structure
3149+00	Nettle Creek Aqueduct and Footbridge	The footbridge and aqueduct are in good condition.
3214+80	Hoges Vehicle Bridge	The bridge is in good condition.
3285+21	Waupecan Island Spillway	The spillway is in fair condition.
3450+35	Holderman's Creek Culvert	This culvert is in good condition.
3574+70	Rat Run Culvert	The inlet of the culvert is blocked with brush and debris.
3512+30	Browns Culvert	The inlet is partially blocked with debris and the outlet is submerged and filled with riprap.

Station	Type of Structure	Condition of Structure
3706+55	Culvert	The culvert is lined with a corrugated metal pipe which is in very poor condition.
3770+32	Culvert	The culvert is lined with a corrugated metal arch which is in good condition.
3806+98	North Kickapoo Creek Culvert	The structure is in fairly good condition.
3926+83	Control Gates	The gates and abutments are in a deteriorated condition.
3928+63	Gum Creek Culvert	The culvert is in good condition.
3930+50	Lock Number 9	The lock is in fair condition.
3939+00	Lock Number 10	The lock walls are in good condition, but the gates are deteriorating.
3942+10	Pearl St. Bridge	This bridge is in fair condition.

**Reach No. 6, Marseilles to Ottawa:** From Marseilles to Ottawa, the canal is in fair condition. Through the City of Ottawa, the canal is in very good condition. The canal is dry and the weeds and debris have been cleared out. The towpath throughout the reach is in good condition. The only drainage into the canal is local. There are no major creeks emptying into the canal.

Station	Type of Structure	Condition of Structure
3991+06	Long Creek Culvert	The culvert is in fair condition.
3998+30	Footbridge	The footbridge is in good condition.
4042+84	Walbridge Culvert	This brick arch culvert is in poor condition.
4131+18	Wooden Box Culvert	The culvert is in fair condition.
4161+67	Private Vehicle Bridge	The bridge is in fair condition.
4172+65	Milliken Creek Culvert	This structure is in fair condition.
4217+00	Private Footbridge	The bridge is in poor condition.
4260+60	Private Road Bridge	The bridge is in good condition.
4286+00 and 4289+00	Earth Dams	These two earth dams have been constructed across the canal. Each dam has one 24-inch vitrified clay pipe through it to provide for the canal flow.
4295+00	Footbridge	This footbridge is in good condition.
4305+00	Fox River Aqueduct and Footbridge	The aqueduct is in good condition. The footbridge is in fair condition.
4328+65	Guion Street Footbridge	This structure is in good condition.

Station	Type of Structure	Condition of Structure
	Bridge No. 1 Across the Fox River Feeder	The bridge is in a deteriorated condition.
	Bridge No. 2 Across the Fox River Feeder	This bridge is in fair condition.
	Bridge No. 3 Across the Fox River Feeder	This stone arch culvert is in a deteriorated condition.
	Control Structure and Towpath Bridge across the Fox River Feeder	The deck of the bridge is in fair condition. However, the stone abutments are in a very deteriorated condition.

**Reach No. 7, Ottawa to LaSalle:** The canal in this reach is generally in poor condition with the exception of the recently dredged section between Utica and Pecumsaugan Creek. Drainage in the reach is mostly local although there are two major creeks which discharge into the canal.

Station	Type of Structure	Condition of Structure
4433+55	Lock Number 11	The lock is in good condition.
4467+96	Private Footbridge	This footbridge is in very poor condition.
4512+50	Lock Number 12 and Footbridge	Both structures are in a deteriorated condition.
4531+00	Towpath Bridge and Waste Gate	The bridge and gates have been removed—only the abutments remain.
4677+00	Culvert	The Chicago Rock Island and Pacific Railroad has cut a ditch across the canal and towpath with a 54-inch pipe under the towpath.
4759+00	Culvert	This culvert is in poor condition.
4776+50	Private Vehicle Bridge	This bridge is in good condition.
4806+50	Private Footbridge	This bridge is in good condition.
4814+85	Clark's Run Culvert	The culvert is in good condition.
4846+35	Utica Footbridge	This bridge is in good condition.
4940+60	Pecumsaugan Creek Vehicle Bridge and Overflow Structure	The bridge and overflow structure are in good condition.
4950+00	Lock Number 13	The lock has been completely removed.
4964+10	Towpath Bridge and Control Structure	The structure is in fair condition.
5051+12	Little Vermilion River Aqueduct and Towpath Bridge	The superstructure is in good condition. The piers are in a very deteriorated condition.
5071+00	Private Footbridge	This footbridge is in poor condition.

Station	Type of Structure	Condition of Structure
5075+00	Private Footbridge	This footbridge is in very poor condition.
5082+00	Lock Number 14	The structure is in poor condition.
5087+00	Lock Number 15	The structure is in poor condition.



## CHAPTER 22

### PRESENT USE OF THE CANAL

**General Use:** The canal and canal lands, although no longer used for purposes of commercial navigation, do serve several purposes as described under the following captions.

**Recreation and Conservation:** The major recreational facilities located along the canal are at Channahon and Gebhard Woods State Park, and at McKinley Woods Forest Preserve. Other areas were developed along the canal during the nineteen-thirties but, due to a lack of maintenance, have deteriorated to such an extent as to be worthless for recreational purposes.

From a conservation standpoint, the timber stands and wild vegetation along the canal reflect a cross section of the natural flora of this area of the State. In addition, State statutes provide that all State owned lands shall be game preserves. As a result, wildlife along the canal is varied and abundant.

**Leases:** Leasing of canal lands for use by individual renters constitutes the primary source of income for canal maintenance. Use of the land granted by these leases is varied, covering such general headings as land, commercial, residential, road, bridge, industrial, pole line and pipe line leases. In connection with leases, mention should be made of encroachments which constitute an unauthorized use of canal lands. These encroachments fall under the same general headings as given for leases. Appendix 85 is a set of 125 maps showing the type, rental fee, and location of the leases along the canal, and the type and location of all known encroachments.

**Drainage:** As previously stated, the primary present use of the canal is to provide a channel for the surface drainage intercepted in the original construction of the canal. At the present time, the canal and its appurtenant structures are in a deteriorated and inadequate state. Complete rehabilitation of the canal and most of its structures will be required before the drainage can be adequately handled, and disposed of so as to minimize loss or damage to property along the canal.

**Public Hearings:** As a means of securing local data as to uses of the canal, and local views concerning problems connected with disposal or sale of the canal lands, public hearings were held at Ottawa, Joliet and Chicago in 1956. At these hearings all who wished to do so were accorded full opportunity to state their views in full. The transcripts of these public hearings are contained in appendix 84.



## LIST OF APPENDICES

*(The appendices have not been printed)*

1. Canal to connect the Illinois River with Lake Michigan. Report of Major Stephen Long, March 4, 1817. American State Papers.
2. Roads and Canals. Report of the Secretary of War, January 7, 1819. American State Papers.
3. Canal to connect the Illinois River with Lake Michigan. Report of Graham and Philips, April 4, 1819. American State Papers.
4. Message to the Third General Assembly. Governor Shadrach Bond, December 4, 1822. House and Senate Journals.
5. Message to the Third General Assembly. Governor Edward Coles, December 5, 1822. House and Senate Journals.
6. An Act to provide for the improvement of the internal navigation of this State. Approved February 14, 1823. Session Laws.
7. Report of the Canal Commissioners of the State of Illinois. Includes the report of Post and Paul, An Act to incorporate the Illinois and Michigan Canal Company, and a map showing the proposed canal. Printed by Robert Blackwell. Vandalia, 1825. Illinois Historical Library.
8. An Act to repeal "An Act to incorporate the Illinois and Michigan Canal Company, and for other purposes." Approved January 20, 1826. Session Laws.
9. Report of Select Committee. Document No. 53, House of Representatives, Eighteenth Congress, second session. February 1, 1825.
10. Memorial of the General Assembly of Illinois. Senate Document No. 49, Nineteenth Congress, first session.
11. Report of Committee on Roads and Canals. Report No. 147, Nineteenth Congress, first session. March 30, 1826.
12. Memorial of the General Assembly of Illinois. House Document No. 81, Nineteenth Congress, second session.
13. Report of Select Committee on Road and Canals. Senate Document No. 29, Nineteenth Congress, second session. January 23, 1827.
14. An Act to provide for constructing the Illinois and Michigan Canal. Approved January 22, 1829. Session Laws.
15. Report of a Survey of the route of a Canal to connect the waters of Lake Michigan with those of Illinois River. Document No. 245, House of Representatives, Twenty-second Congress, first session. May 24, 1832.
16. Report of survey of canal route between Chicago River and Ausogamashkee Swamp. James Bucklin, December 18, 1830. Canal Records.
17. Report of the Canal Commissioners. December 27, 1830. Canal Records.
18. Message to the Seventh General Assembly. Governor Ninian Edwards, December 8, 1830. House and Senate Journals.
19. An Act to amend "An Act to provide for the construction of the Illinois and Michigan Canal." Approved February 15, 1831. Session Laws.
20. Report on the Calamie as a summit feeder. James Bucklin, June 6, 1831. Canal Records.
21. Reports on Progress of Surveys. James Bucklin to Charles Dunn, November 21, 1831; Charles Dunn to Board of Commissioners, November 22, 1831; Board of Commissioners to the Governor, November 23, 1831. Canal Records.
22. Final report on survey for canal or railroad. James Bucklin, January 1, 1833. Canal Records.
23. Report of the Canal Commissioners to the Eighth General Assembly, January 30, 1833. Canal Records.

24. Message to the Eighth General Assembly. Governor John Reynolds, December 4, 1832. House and Senate Journals.
25. An Act to abolish the office of Canal Commissioners. Approved March 1, 1833. Session Laws.
26. Memorial of the Eighth General Assembly. Adopted December 20, 1832.
27. Report of Committee on Internal Improvements. Report No. 446, House of Representatives, Twenty-second Congress, first session, April 13, 1832.
28. An Act to amend an Act entitled "An Act to grant a quantity of land to the State of Illinois, for the purpose of aiding in opening a canal to connect the waters of the Illinois River with those of Lake Michigan." Approved March 2, 1833 (4 Stat. at Large, p. 662).
29. Report of Committee on Roads and Canals. Report No. 546, Twenty-third Congress, first session. June 25, 1834.
30. Report on Steamboat Canal. General Gratiot, Chief of Engineers, June 6, 1834. In Report No. 546, Twenty-third Congress, first session.
31. Letter to Committee on Roads and Canals. Governor Joseph Duncan, December 30, 1833. In Report No. 546, Twenty-third Congress, first session.
32. Certified lists of lands granted to the State pursuant to the Act of March 2, 1827. Certified by the General Land Office and approved by the President of the United States. Canal Records.
33. Message to the Ninth General Assembly, second session. Governor Joseph Duncan, December 7, 1835. House and Senate Journals.
34. An Act for the construction of the Illinois and Michigan Canal. Approved January 9, 1836. Session Laws.
35. Report of the Chief Engineer, Illinois and Michigan Canal, for the year 1836. Canal Records.
36. Report of the Commissioners of the Illinois and Michigan Canal for the year 1836. Canal Records.
37. Report of the Committee on Canal and Canal lands. Senate, Tenth General Assembly. February 15, 1837.
38. An Act to amend an Act entitled "An Act for the construction of the Illinois and Michigan Canal, approved January 9, 1836." Approved March 2, 1837. Session Laws.
39. Reports of Benjamin Wright, Consulting Engineer. October 23, 1837; October 25, 1837. Canal Records.
40. Report of the Canal Commissioners. Third Annual Report. December 13, 1838. Canal Records.
41. Report of the Chief Engineer of the Illinois and Michigan Canal for the year 1838. December 10, 1838. Canal Records.
42. Report of the Chief Engineer of the Illinois and Michigan Canal for the year 1839. December 5, 1839. Canal Records.
43. Report of the Chief Engineer of the Illinois and Michigan Canal for the year 1840. December 10, 1840. Canal Records.
44. Report of the Committee on Canals and Canal Lands. Senate, Twelfth General Assembly, second session, January 8, 1841.
45. Message to the Thirteenth General Assembly. Governor Thomas Ford, December 8, 1842. House and Senate Journals.
46. Report of the Chief Engineer of the Illinois and Michigan Canal for the year 1842. December 1, 1842. Canal Records.
47. Report of Committee on Canals and Canal Lands. Senate, Thirteenth General Assembly, first session, January 5, 1843.
48. An Act to provide for the completion of the Illinois and Michigan Canal. Approved February 21, 1843. Session Laws.
49. An Act supplemental to "An Act to provide for the completion of the Illinois and Michigan Canal. Approved February 21, 1843." Approved March 1, 1845. Session Laws.
50. Report of the Committee on Public Lands. Report No. 48, House of Representatives. Twenty-eighth Congress, second session. January 17, 1845.

51. Report of the Chief Engineer of the Illinois and Michigan Canal for the year 1845. Illinois Documents.
52. An Act to provide for the completion of the Illinois and Michigan Canal upon the plan adopted by the State in 1836. Approved February 16, 1865. Session Laws.
53. Report upon the Survey of the Illinois River. Board of Engineers, War Department. Annual Report of Chief of Engineers. December 17, 1867.
54. An Act ceding the Illinois and Michigan Canal to the United States. Approved April 28, 1882. Session Laws.
55. Report upon the acquisition and improvement of the Illinois and Michigan Canal, and the construction of the Hennepin Canal. Board of Engineers, War Department. Annual Report of the Chief of Engineers, January 10, 1887.
56. City of Chicago v. Mary McGraw. Decision of the Supreme Court of Illinois. (75 Ill. 566) 1874.
57. Ex Parte Boyer. Decision of the Supreme Court of the United States (109 U.S. 629) 1884.
58. Wheeler v. City of Chicago. Decision of the United States Circuit Court, Northern District of Illinois, 1895.
59. Burke v. Snively. Decision of the Supreme Court of Illinois (208 Ill. 348) 1904.
60. Wells v. Wells. Decision of the Supreme Court of Illinois (252 Ill. 320) 1914.
61. Mortell v. Clark. Decision of the Supreme Court of Illinois (272 Ill. 201) 1916.
62. People v. McDonnell. Decision of the Supreme Court of Illinois (362 Ill. 114) 1935.
63. Columbia Haley Dooner v. United States. Decision of the United States Court of Claims. (95 U.S. Court of Claims 392) 1942.
64. Grant of Lands to Indiana for Canal. Opinion of Reverdy Johnson, Attorney General of the United States. (5 Opin. 179) 1849.
65. Wabash and Miami Canal Lands. Opinion of Charles Devens, Attorney General of the United States (16 Opin. 251) 1879.
66. Title of the State to the Bed of the Illinois and Michigan Canal. Opinion of Edward Brundage, Attorney General of Illinois. 1917.
67. The Illinois and Michigan Canal. Illinois Legislature Council. Publication No. 64, November 1944.
68. Why the United States Should Perfect the Title of the State of Illinois in the Illinois and Michigan Canal. Brief by Charles L. Walker, Attorney for the Canal Commissioners. 1910.
69. Report on Senate Bill No. 710, Seventy-fourth Congress, first session. Secretary of the Interior to the Chairman, Committee on Commerce. Senate. March 25, 1935.
70. Report on Senate Bill No. 1194, Seventy-fifth Congress, first session. Secretary of the Interior to the Chairman, Committee on Public Lands. Senate. April 3, 1937.
71. Declaring a portion of the Illinois and Michigan Canal an unnavigable stream. Report of Committee on Commerce. House Report No. 1993, Seventy-eighth Congress, second session. November 30, 1944.
72. A Report of the Illinois and Michigan Canal. State of Illinois, Department of Public Works and Buildings, Division of Waterways. April 1944.
73. An Act to create the Illinois and Michigan Canal Commission. Approved February 21, 1945. Session Laws.
74. Preliminary Report of the Illinois and Michigan Canal Commission. House Journal, Sixty-fourth General Assembly, 1945.
75. Senate Joint Resolution No. 32. Sixty-fourth General Assembly. May 10, 1945.
76. An Act to create the Illinois and Michigan Canal Commission. Approved July 24, 1945. Session Laws.
77. House Joint Resolution No. 25, Sixty-fifth General Assembly, April 9, 1947.

78. Report of the Committee on Public Works. Report No. 363, House of Representatives, Eightieth Congress, first session. May 13, 1947.
79. An Act in relation to the acceptance by the State of Illinois, of the terms, conditions and obligations, of an Act of the Congress of the United States relating to the Illinois and Michigan Canal. Approved July 21, 1947. Session Laws.
80. An Act to add Section 7, to "An Act in relation to the Illinois and Michigan Canal, approved June 17, 1919." Approved July 21, 1947. An Act to add Section 29, to "An Act to revise the law in relation to the Illinois and Michigan Canal, approved March 27, 1874." Approved July 21, 1947.
81. An Act to create the Illinois and Michigan Canal Commission. Approved August 8, 1947. Session Laws.
82. An Act to amend Section 7 of "An Act in relation to the Illinois and Michigan Canal, approved June 17, 1919." Approved June 24, 1949. Session Laws.  
An Act to amend Section 29 of "An Act to revise the law in relation to the Illinois and Michigan Canal, approved March 17, 1874." Approved June 24, 1949. Session Laws.
83. A Report of the Illinois and Michigan Canal Commission. May 1949. Illinois Documents.
84. Transcripts of Public Hearings held by the Division of Waterways. Ottawa, Ill., April 1956; Joliet, Ill., May 1956; Chicago, Ill., June 1956. Division of Waterways, Springfield, Ill.
85. Atlas of Property Maps. Showing leases of canal lands now in effect, and encroachments on canal lands. Division of Waterways, Springfield, Illinois.













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